

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY
DOCKET NO. L-1141-99

- - - - - :
MYRON A. MEHLMAN as Adminis-:
tratrix Ad Prosequendum and : Civil Action
Administrator of the Estate :
of Constance L. Mehlman, :
deceased, : TRANSCRIPT OF
: PROCEEDINGS
Plaintiff, :
:
PHILIP MORRIS, INC., : VOLUME 13
(PHILIP MORRIS, U.S.A.), : PAGES 2406 - 2640
R.J. REYNOLDS TOBACCO CO., :
:
Defendants. :
- - - - - :

Tuesday, April 24, 2001
10:00 a.m.
1 JFK Square
New Brunswick, New Jersey

B E F O R E:

MARINA J. CORODEMUS, J.S.C., and a Jury

Reported by: Marianne A. Cammarota, CRR
Nancy Taguinot,
Certified Shorthand Reporters

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1	I N D E X			
2				
3	WITNESS	DIRECT	CROSS	REDIRECT RECROSS
4	MYRON MEHLMAN			
5	By MR. PATRICK	2410		2574
6	By MR. ROSENBERG		2482	2590
7	HOPE DANA MEHLMAN			
8	By MR. MIGLIORI	2593		
9	By MS. ROOSEVELT		2626	
10	By MR. MIGLIORI			2634

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THE COURT: Good morning, everyone.
I've had an opportunity to speak with counsel, lead
counsels in chambers this morning. We are getting
off to a delayed start because of the emergency
evacuation, which thankfully produced nothing.
However, we have done some work in chambers
regarding some issues.

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The first issue has to do with the
DeBille case on the issue of the second marriage of
the plaintiff. It has been agreed to by the parties
that that will be included on the list of
stipulations which are forthcoming, Mr. Clark,
right?

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MR. CLARK: Yes, Judge.

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THE COURT: And I'll incorporate that
on the stipulations to be read to the jury at the
conclusion of plaintiff's case.

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I've also invited both sides to
submit suggested jury charge language tailored to
the DeBille case on the issue of the compensation,
and I'll review that with counsels as we go along.
So in the parlance of this court, that means I would
like to see it Monday or Tuesday of next week.

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And regarding the issue of the 1976
letter --

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MR. ROSENBERG: 1978 letter, your
Honor.

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THE COURT: 1978 letter, both parties
are now aware that the plaintiff will introduce that
through Dr. Mehlman, and they are aware that defense
has broad cross-examination on that issue.

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Regarding the psychiatric records, I
have decided that we're going to wait until the
conclusion of the plaintiff's direct, at which time
I will call lead counsel in and make a ruling on
that depending on the issues that may come up in
direct. Otherwise, it will be an advisory opinion

15 so it's not ripe for a decision until that issue
16 actually exists.

17 Regarding the 4:37-2B directed
18 verdict issue, because this is such a complex case
19 in the sense that there is a plethora of information
20 on both sides, it has been agreed to by the parties
21 that the Court is on notice that there will be
22 motions made by the defense and a summary outline
23 will be placed by the defense at the conclusion of
24 the plaintiff's case, once the plaintiff rests.
25 Both parties have agreed to mutual briefing

2411

1 schedules which will include the defense's brief by
2 midday this Friday and the plaintiff's response by
3 four o'clock on Monday, and I will endeavor to get
4 you a decision by Thursday or Friday of the
5 following week. It has been agreed to by the
6 parties, it has been consented to, we understand and
7 have read the rule together, however, we think these
8 are exceptional circumstances because of the
9 complexity of the testimony here.

10 We are also facing witness problems,
11 just for the record. There are two other tobacco
12 cases going on, one, of course, Judge Weinstein's in
13 the Federal District Court in Brooklyn, the Eastern
14 District, and I believe also one in Los Angeles.
15 There seems to be a premium on certain witnesses.
16 While we're trying to be cooperative with one
17 another, as courtesies to each court, it is very,
18 very tight. We've already experienced that on the
19 plaintiff's side, and it appears that we're going to
20 experience it on the defense side. And these things
21 happen during trial and we want to make sure we can
22 do the best we can to make sure everyone's witness
23 comes forth, but there will be adjustments made in
24 the schedules. And I compliment, again, counsels
25 for their professionalism to cooperate with the

2412

1 court and other courts in trying to make the
2 witnesses available as possible.

3 Is that the summary of the
4 proceedings we had this morning?

5 MR. ROSENBERG: Yes, it is, your
6 Honor.

7 MR. PATRICK: Yes, your Honor.

8 THE COURT: All right. We'll await
9 the jury. Do I have a deposition of Dr. Mehlman?

10 MR. MIGLIORI: Your Honor --

11 THE COURT: I've just been handed a
12 note -- I'm sorry, go ahead.

13 MR. PATRICK: Your Honor, I do have a
14 copy of the deposition.

15 THE COURT: Okay. I would just like
16 it.

17 MR. PATRICK: Certainly.

18 THE COURT: I've just been handed a
19 note that the backup line downstairs for jurors is
20 still quite lengthy. So we are awaiting jurors to
21 return. Apparently, they are on line, but everyone
22 else is waiting for jurors to be clear.

23 As you know there's one security line
24 for jurors as opposed to the general public. The
25 attorney's line is obviously a lot shorter, which is

1 why I have the attorneys back early, but there was
2 an emergency called at the courthouse and that has
3 accounted for the delay, and we'll just have to wait
4 upon the jurors.

5 All right. So as soon as I know,
6 you'll know, and I'll be back as soon as they're
7 here.

8 (A recess is taken.)

9 (The jury enters the courtroom.)

10 THE COURT: All right. I think I had
11 it fixed, but you tell me, but just as a precaution
12 I'll move you over one seat.

13 All be seated please.

14 Good morning. We were all ready to
15 go at nine clock today, I give you my word. There
16 was an emergency called at the courthouse, and
17 obviously, it's better to be safe. So you've now
18 experienced just about everything here.

19 Are you still having trouble with
20 your chair? Is your chair all right?

21 THE JUROR: I'm looking for the pen.

22 THE COURT OFFICER: Whoever needs
23 pens.

24 THE COURT: I was waiting here at
25 eight o'clock this morning to talk to the
Mehlman-Direct/Patrick

2414

1 administration about the heat. I will tell you it's
2 twice as difficult under the robe, and I appreciate
3 your patience with us. We're up to four fans, and
4 I've asked for supplemental fans to come in.
5 Apparently, the air conditioning is not operative,
6 so it's just the word I got this morning.

7 So again, I'm sorry for the
8 inconvenience, but I really encourage you to bring
9 water in. It does make it a little more bearable.
10 I apologize for the condition of the courthouse.
11 That's what I have to work with. Thank you.

12 All right. New witness today?

13 MR. PATRICK: Yes, your Honor.

14 THE COURT: Yes, sir.

15 MR. PATRICK: Your Honor, our next
16 witness will be Dr. Myron Mehlman.

17 THE COURT: Dr. Mehlman to the stand
18 please.

19
20 M Y R O N M E H L M A N , having
21 been duly sworn according to law by the Officer,
22 testified as follows:

23
24 DIRECT EXAMINATION BY MR. PATRICK:

25 THE COURT: Mr. Patrick?

Mehlman-Direct/Patrick

2415

1 MR. PATRICK: Good morning.

2 Q. Good morning, Dr. Mehlman.

3 A. Good morning.

4 Q. Dr. Mehlman, you and I have very
5 different accents, so I'm going to ask you to speak
6 as distinctly as possible, and I'm going to try to
7 do the same, and keep our voices up so the jury can
8 hear us. Is that acceptable to you?

9 A. Yes.

10 Q. Dr. Mehlman, your wife was Constance

11 Mehlman?
12 A. Yes.
13 Q. And Connie died on June 13, 1997; is
14 that correct?
15 A. Yes.
16 Q. When she died how long had you and
17 Connie been married?
18 A. Almost 37 years, a couple of months
19 short.
20 Q. And after her death, you became the
21 personal representative or the administrator of her
22 estate, the estate of Constance Mehlman?
23 A. Yes.
24 Q. And on behalf of the estate, you,
25 Myron Mehlman, have brought this lawsuit for her
Mehlman-Direct/Patrick 2416
1 wrongful death; is that right?
2 A. Yes.
3 Q. And during the course of your
4 marriage, did you and Connie have children?
5 A. Yes.
6 Q. And who are your children and when
7 were they born?
8 A. The oldest -- we had three daughters.
9 The oldest was Mara. She was born in 1962 in
10 Urbana, Illinois. The second daughter was Hope.
11 She was born in Boston, Massachusetts, in 1964. And
12 the youngest daughter was Allison. She was born in
13 Newark, New Jersey, in 1969.
14 Q. And you are appearing here today both
15 as the husband and as the administrator of the
16 estate of Constance Mehlman; is that correct?
17 A. Yes, on behalf of our family.
18 Q. Now, Dr. Mehlman, I would like for
19 you to tell the court and the jury your background.
20 And first of all, let me ask you this, where are you
21 born?
22 A. I was born in Zaleschiki, Poland.
23 Q. And when were you born?
24 A. December 21, 1934.
25 Q. And in Poland, what did your parents
Mehlman-Direct/Patrick 2417
1 do?
2 A. My father was a doctor, neurosurgeon.
3 My mother was a nurse, and she became a housewife.
4 Q. And it was a long time ago, but do
5 you remember anything about your father?
6 A. I do remember a few particulars. He
7 was head of a hospital, and he used to take me to
8 work with him. He actually made a small lab coat so
9 I can follow him all over. He was in surgery all
10 the time. He permitted me to go everywhere, except
11 when babies were delivered. And they told me I
12 would go blind if I watched through the door during
13 deliveries, but I always kept on watching but I
14 closed one eye. That I clearly remember.
15 Q. So you would actually follow your
16 father around in the hospital?
17 A. I did.
18 Q. Where were you and your family during
19 World War II?
20 A. We left Poland. We went into Russia.
21 That is German Army advanced and then we went deep

22 into formerly so-called Soviet Union. We went into
 23 Asia, Kazakhstan, and we lived in a city called
 24 Atbasar

25 Q. And you and who else in your family
 Mehlman-Direct/Patrick 2418
 1 went to Kazakhstan?

2 A. My mother, my younger sister and I.

3 Q. And why did you and your family,
 4 except for your father go to Kazakhstan?

5 A. Because my father was drafted into
 6 Russian Army as a medical officer, we had to leave.
 7 Anyone who served in the Russian Army, family would
 8 be punished.

9 Q. And what happened as far as Poland
 10 was concerned, why did you have to leave Poland?

11 A. Because it was occupied by the
 12 Germans.

13 Q. How old were you when you began
 14 working?

15 A. About seven, I set up a small
 16 business when I was in Kazakhstan.

17 Q. What did you do?

18 A. I shined shoes.

19 Q. And for approximately how long were
 20 you in Kazakhstan in Russia?

21 A. Up till '45 when the war ended.

22 Q. And what did you do -- you and your
 23 family do when the war ended in 1945?

24 A. We went back to Poland. From Poland
 25 we crossed in a truck -- I do remember that because
 Mehlman-Direct/Patrick 2419
 1 it was not quite legal then -- into East Germany. I
 2 clearly remember how the driver pulled out a couple
 3 of bottles of vodka, and they let us through. You
 4 could buy a lot at that time with something like
 5 that, and then we went into West Berlin, and then
 6 the American military transported us to Frankfurt,
 7 and shortly thereafter, we went to the United States
 8 from Bremen.

9 Q. And where in the United States were
 10 you able to go?

11 A. My mother had her family there. Her
 12 mother and her father and her brothers settled in
 13 Dallas, Texas. So they were in business so we were
 14 able to live in the same house with our grandparents
 15 or my mother's parents.

16 Q. How old were you at that time?

17 A. I was about 12, 13, approximately.

18 Q. So you were 12, or 13 years old and
 19 you're now in Dallas, Texas?

20 A. Yes.

21 Q. And at that time did you speak any
 22 English?

23 A. No, none whatsoever.

24 Q. What was your language? What
 25 languages did you speak?
 Mehlman-Direct/Patrick 2420
 1 A. I spoke Russian and I spoke Polish.

2 Q. Now, did you begin school in Texas?

3 A. Yes, because I couldn't speak English
 4 they put me in the first grade and I lasted there
 5 about two weeks. It was just too uncomfortable.
 6 The chairs were so small, they had to promote me.

7 Q. And where did you go next? Where was
8 your promotion to in terms of schools?
9 A. Well, I took less than a year to go
10 through and graduate grade school. It was called
11 City Park Grade School in Dallas, Texas, and then I
12 went to high school.
13 Q. Over what period of time was it that
14 you began or that you learned the English language?
15 A. Very fast while I was still in grade
16 school, because everyone only spoke English. Plus
17 the fact that I worked after school and weekends for
18 my uncle who owned a grocery store.
19 Q. What do you do for your uncle?
20 A. I stocked shelves. I cleaned the
21 store. I swept, miscellaneous things, any type of
22 physical work. And I had to learn English very
23 fast.
24 Q. Now, at some point in time, did you
25 move from Texas?
Mehlman-Direct/Patrick 2421
1 A. Yes.
2 Q. And where did you go?
3 A. New York City.
4 Q. And why did you move to New York
5 City?
6 A. We had relatives there, and in order
7 to continue in my school in New York City had like
8 city colleges, and they were very inexpensive in
9 terms of tuition.
10 Q. And had you been in school in Texas?
11 A. Yes. First year when I graduated
12 from high school, I went to Southern Methodist
13 University.
14 Q. And then you continued on your
15 education in New York City?
16 A. Yes.
17 Q. Did you also work while you were in
18 New York City?
19 A. I worked full-time and I went to
20 school at night. I worked in Macy's meat department
21 as a butcher. I joined the union, and that was
22 located on 34th Street and 7th Avenue in Herald
23 Square.
24 Q. And did you go to school as well?
25 A. Yes, in the evening.
Mehlman-Direct/Patrick 2422
1 Q. And where did you go to school?
2 A. City College of New York, Uptown.
3 Q. Now, did there come a time when you
4 were inducted into the United States --
5 A. Uh-oh.
6 THE COURT: Napkins, just two
7 minutes.
8 THE WITNESS: I'm okay.
9 Q. Okay.
10 A. Yes.
11 Q. Let me restate the question. Are you
12 okay up there?
13 A. I'm fine.
14 Q. All right. Dr. Mehlman, did there
15 come a time when you were inducted into the United
16 States armed services?
17 A. Yes, 1958.

18 Q. And can you tell me about that
19 please?
20 A. 1958, I got my draft notice, and I
21 went downtown, New York, they took us by bus to Fort
22 Benning -- excuse me Fort Dix. And after a week or
23 two of processing, I was sent to Fort Benning for
24 basic training.
25 Q. May we see, No. 1 please.
Mehlman-Direct/Patrick 2423
1 Dr. Mehlman, I have a picture up on
2 the screen there, and this is Exhibit 80800. We
3 have a group of pictures of you and your family
4 which have been admitted into evidence, and this is
5 No. 1 of that series, and I want you to see if you
6 can identify that gentleman in the picture please.
7 A. Yes. This is 1959 when I was in the
8 service. I was stationed at Edgewood Arsenal where
9 I worked in their toxicological laboratories.
10 Q. And what did you do in the
11 toxicological laboratories?
12 A. Research on both humans and animals.
13 Q. Now, is this the time when you first
14 became interested in what was to become your career,
15 that is as a toxicologist?
16 A. Yes.
17 Q. Now, what year did you meet Connie?
18 A. 1959.
19 Q. And what was her name at that time?
20 A. Constance Lloyd.
21 Q. And how did you and Connie meet?
22 A. On the weekends, a group of us were
23 stationed at Edgewood Arsenal in New York. We used
24 to travel to New York. We would come in Friday. We
25 would get off at Penn Station or close by, and then
Mehlman-Direct/Patrick 2424
1 Sunday evening we would go back. One Sunday I had
2 extra time, came down to New York early -- and
3 usually in New York they have dances in the hotel,
4 so I decided to go to a dance to spend an hour or
5 two, and that's where I saw Connie standing with her
6 friend Cecile, and subsequently -- she was smoking,
7 quite heavily. I guess probably the reason I came
8 over and start speaking to her about smoking,
9 probably a little bit of an argument. And after a
10 few minutes, I asked her to dance, and that's how I
11 met her.
12 MR. PATRICK: Can we look at No. 2
13 please.
14 Q. Dr. Mehlman, can we identify what is
15 exhibit No. 2?
16 A. Yes. That is me and Connie, and
17 naturally she has a cigarette in her hand.
18 Q. And so when you first met her in
19 1959, she was smoking?
20 A. Yes. She was smoking.
21 Q. What was Connie like when you met
22 her?
23 A. She was good looking. She was funny.
24 She has a good sense of humor, because when I asked
25 her for the number -- I mean I didn't think she
Mehlman-Direct/Patrick 2425
1 would give it to me after what I said to her. And
2 she was fun. I think she was also very smart.

3 Q. Did there come a time that you were
4 able to follow-up and call her on the phone and get
5 a date with her?

6 A. Not immediately. I wasn't sure if I
7 should call her, and I wasn't sure she would go out
8 with me after that discussion. So a few months
9 later, I decided to call and she agreed to go out.
10 So I took her to a show in New York. By the way all
11 the tickets were free. Being in the service we go
12 to USO and you get your tickets to a very good show,
13 and usually excellent seats.

14 Q. And tell us about that date?

15 A. Well, that was the first date. And
16 the second time I took her out again, and then she
17 decided she wants to eat, and I really wasn't
18 prepared for that. So I took her out and we had
19 something to eat in a restaurant, like Horn and
20 Hardart, not a good restaurant. She only had
21 something to eat, and I didn't have much money, and
22 I told her I wasn't hungry, but I was dying to get
23 something. And I think she realized, but I did have
24 enough to get home.

25 Q. What was Connie's background?
Mehlman-Direct/Patrick 2426

1 A. Connie was brought up in New York
2 City. She was raised and went to grade school, high
3 school. She graduated from high school, and she
4 graduated from Hunter College. And at the time she
5 worked for American Red Cross in adoptions.

6 Q. Now, Dr. Mehlman, while you and
7 Connie were married, did you maintain a collection
8 of family photographs?

9 A. Yes, we did. We actually have huge
10 collection, boxes and boxes.

11 Q. And did she provide for this
12 collection some photographs of her that were taken
13 of her prior to your marriage?

14 A. Yes.

15 Q. And Dr. Mehlman, can you identify
16 this photograph which is No. 3 in the series?

17 A. Yes. This is Connie when she was
18 small.

19 Q. How do you know this Connie?

20 A. Looks like her exactly. If you go
21 through her progression and she grew up, you can see
22 it, almost identical.

23 Q. And let's look at No. 4 please.

24 A. This is Connie a little older.

25 Q. Do you know -- do you have any
Mehlman-Direct/Patrick 2427

1 approximation about how old she was in that picture?

2 A. I have to guess, she was maybe about
3 12 or so, ten, 12, 13, I don't know.

4 Q. All right. And the next photograph
5 please?

6 A. That's Connie when she graduate from
7 high school, and this is on the back of that picture
8 is her high school diploma, 1951.

9 Q. And this is a photograph and on the
10 back of the photograph is a small picture or
11 representation of her diploma from June 1951?

12 A. Yes.

13 Q. And you found this in your collection

14 of photographs?
15 A. Yes, I did.
16 Q. Next please. Now, this is Connie
17 where?
18 A. When she graduate from Hunter
19 College.
20 Q. And when did she graduate from Hunter
21 College?
22 A. 1955.
23 Q. And I believe the next one is 6 --
24 this is 7, 7 in the series. Can you identify this
25 young lady for me please?
Mehlman-Direct/Patrick 2428
1 A. Yes, this is Connie. It is before I
2 met her.
3 Q. Now, you told us that when you first
4 met Connie there was some discussion about cigarette
5 smoking. Over the course of time, did the two of
6 you have discussions about cigarette smoking, her
7 cigarette smoking?
8 A. We did.
9 Q. And tell me about those discussions.
10 What kind of discussions did you have?
11 A. Well, basically, I didn't want her to
12 smoke, because it was not good for her. She had
13 childhood asthma, and if you smoked, it would
14 irritate your asthma. You cough. And you never
15 know how much -- how difficult to see somebody who
16 is gasping for breath. I don't know if you ever
17 seen, but I found it for me it was very difficult to
18 see her struggling to breathe when she had an asthma
19 attack.
20 Q. But did there come a point in time
21 when you were able to tolerate her cigarette smoke?
22 A. Yes. If I couldn't tolerate, we
23 wouldn't get together, and I just hoped some day she
24 would realize and stop smoking.
25 Q. What brands of cigarettes did Connie
Mehlman-Direct/Patrick 2429
1 smoke when the two of you met?
2 A. When we met, she smoked either
3 Marlboro or Camel. She smoked interchangeably
4 Marlboro and Camel. These are the cartons that I
5 see that she purchased. In fact, I do remember that
6 I -- when I was in the service, I bought her couple
7 of cartons of cigarettes from time to time. I
8 didn't want to, but I did because they're very
9 inexpensive, like I think dollar-and-a-half a carton
10 in the PX.
11 Q. And for how long a period of time
12 during Connie's cigarette smoking history did she
13 smoke Camels or Marlboros?
14 A. I think most of her history until she
15 quit.
16 Q. And do you recall her smoking any
17 other brands of cigarettes other than Marlboros or
18 Camels during the time she smoked cigarettes?
19 A. No. I do not recall, but on occasion
20 when we were at a party, if she runs out, she would
21 borrow a cigarette, but I wouldn't know what brand
22 that would be.
23 Q. Now, when Connie became ill with
24 cancer, did you learn at that point from the medical

25 records that Connie reported smoking prior to 1959?
Mehlman-Direct/Patrick 2430

1 A. Yes, I did.

2 Q. And what is your recollection or your
3 understanding of when Connie began to smoke?

4 MR. ROSENBERG: Objection, your
5 Honor, hearsay grounds.

6 THE COURT: No. The phrase is
7 correct. Go ahead. Overruled.

8 A. According to the medical records she
9 started when what she told her doctors, which was
10 many, many years ago. She remembered it was 1951.
11 My impression she started a little earlier when she
12 was in junior high.

13 THE COURT: That's a problem.

14 Q. But based on the medical records it's
15 stated 1951?

16 A. 1951, correct.

17 Q. Now, Dr. Mehlman, without stating
18 what Connie may have told you, or for that matter
19 what anyone else may have told you, do you know
20 based on your own observations, your marriage to
21 Connie for 37 years, your knowledge of Connie and
22 her habits, her concerns for health, why Connie
23 smoked cigarettes?

24 A. I believe she was addicted. She
25 couldn't stopped. She tried to stop, more than one
Mehlman-Direct/Patrick 2431

1 time, my observation, and she always would go back
2 and continue smoking.

3 Q. In 1959, did you -- you, Myron
4 Mehlman -- know that smoking could kill Connie?

5 A. I knew that smoking was very bad for
6 her health. I couldn't clearly say that I knew it
7 in '59. I never followed the history of tobacco
8 smoke.

9 Q. Now, in 1959, did Connie behave in
10 such a way as to lead you, you, to believe that she
11 knew that smoking could kill her?

12 MR. ROSENBERG: Objection.

13 THE COURT: No. It's an observation.
14 He's couched it in observation. Overruled.

15 A. No. I'm certain she didn't know.

16 Q. In 1959, did Connie behave in such a
17 way as to lead you to believe that she knew smoking
18 was addictive?

19 THE COURT: This is personal
20 observation, right?

21 MR. PATRICK: Yes, your Honor.

22 THE COURT: Want to restate it so you
23 don't have an objection?

24 Q. Dr. Mehlman, in 1959, based on your
25 own personal observations of Connie's behavior, did
Mehlman-Direct/Patrick 2432

1 your observations lead you to believe that she
2 thought smoking could -- that smoking was addictive?

3 A. In 1959, I believe she believed that
4 smoking was -- my observation, that it was
5 addictive.

6 Q. Now, Dr. Mehlman, do you recall when,
7 if at all, Connie attempted to quit smoking?

8 A. Since 1960s, we've been married for a
9 long time. She attempted number of times, but very

10 unsuccessful.

11 Q. Can you tell us about her quit
12 attempts?

13 A. Well, she attempted to quit for very
14 short time when we are at the University of
15 Illinois. That didn't last too long, she was back
16 smoking. Then she attempted to quit, and that
17 didn't last too long when we were in Massachusetts.
18 We were there from '64 to -- excuse me, '62 to 1965.
19 And then when we came back to New Jersey in 1967.

20 In '68 when she was pregnant with
21 Allison, somehow, either her doctor or someone
22 convinced her that she should not smoke during the
23 entire pregnancy and she didn't. Then, of course,
24 we went to Omaha, Nebraska in 1969, and there she
25 began on smoke very heavily. It was reinforced by
Mehlman-Direct/Patrick 2433

1 our friends in the medical profession that we were
2 friendly with.

3 Q. Reinforced how?

4 A. Well, in Nebraska, we were very
5 social, Connie and I, with many faculty who were
6 physicians at the University of Nebraska. We used
7 to go out all the time, and several of them were
8 very heavy smokers and their wives. And we are
9 friendly with the staff at the cancer institute
10 which was adjacent to the medical school, and most
11 of them smoked -- not all. The head of the
12 institute was Phil Schubick, but I don't believe he
13 smoked, but everyone else smoked pretty heavy, and
14 she felt it was okay. If they smoked and they're
15 practicing medicine and they see patients, well, it
16 couldn't be that bad.

17 Q. Did you consider Connie to be a
18 strong willed person?

19 A. Yes.

20 Q. And based on your observations of
21 Connie over your period of marriage, why wasn't she
22 successful in stopping smoking until the mid 1970s?

23 A. She was addicted.

24 Q. Now, I believe you said she -- would
25 you like some water?
Mehlman-Direct/Patrick 2434

1 A. I would like some if I may there's no
2 water in here -- no, I'm sorry. There is some but
3 I'm afraid to. Thank you. Thank you.

4 Q. Now, Dr. Mehlman, I believe you said
5 that there was one point that time, I believe you
6 said when Connie was pregnant with Allison in 1968,
7 1969, that she quit smoking for a period of time,
8 correct?

9 A. Yes, during the period of her
10 pregnancy.

11 Q. And that she resumed smoking
12 cigarettes?

13 A. As soon as we left New Jersey and we
14 went to Omaha.

15 Q. How would you describe, based on your
16 own personal observations, Connie's attitude about
17 smoking after she resumed smoking after Allison's
18 birth?

19 A. Her attitude was that she was unhappy
20 that she was smoking, but she continued to smoke.

21 Q. When did Connie finally quit smoking?
 22 A. There are two days that she quit.
 23 One is 1974 according to the records. But as I was
 24 listening in the court, last witness that smoke, it
 25 reminded me of several things. She quit smoking,
 Mehlman-Direct/Patrick 2435
 1 that I knew, when we moved -- when I started working
 2 to for the National Institutes of Health.
 3 Q. What year was that?
 4 A. That was in 1975. Tom Malone who
 5 became Acting Director of NIH was a very close
 6 friends of us and he taught judo.
 7 Q. Taught what?
 8 A. Judo.
 9 Q. What is his name?
 10 A. Tom Malone, M-A-L-O-N-E.
 11 Q. And he taught, not told, taught?
 12 A. Yes.
 13 Q. Go ahead.
 14 A. And we went up and took judo --
 15 actually, this morning. It was still in my closet.
 16 THE COURT: I'm sorry. I didn't get
 17 the last sentence. Please break it down.
 18 Q. What was he teaching?
 19 A. Judo.
 20 Q. Judo, like karate?
 21 A. Karate.
 22 Q. Now, can you continue?
 23 A. And we were going to take lessons
 24 from him. He was teaching classes. He apparently
 25 enjoyed doing that. And we bought karate outfits,
 Mehlman-Direct/Patrick 2436
 1 and I still had mine hanging in the closet which I
 2 haven't seen or touched since 1975. And I do
 3 remember Connie and I went to take the lessons, and
 4 she, I believe, lit up a cigarette and start
 5 coughing, and he spoke to her about it.
 6 Q. Don't tell me what he told her, but
 7 what happened?
 8 A. What happened is that shortly after
 9 that, apparently it penetrated. I don't know how or
 10 why, but it penetrated. And we went to Seventh Day
 11 Adventist cessation smoking program.
 12 Q. All right. Let's stop right there.
 13 What are the Seventh Day Adventists?
 14 A. They -- in Washington, DC, they had a
 15 program to help people quit smoking.
 16 Q. And did you have any involvement in
 17 Connie's participation in this cessation program by
 18 the Seventh Day Adventists?
 19 A. I drove her to the hospital in
 20 Washington, DC. I waited for her, and I brought her
 21 back. That lasted for, to the best of my
 22 recollection, about a week.
 23 Q. And after this program, did she
 24 ultimately quit smoking cigarettes?
 25 A. After '75, I don't remember her
 Mehlman-Direct/Patrick 2437
 1 smoking. I haven't seen her smoking.
 2 Q. And what was her age at the time she
 3 quit smoking?
 4 A. She was 41. 40, 41.
 5 Q. Now, you know Dr. Stupler, do you

6 not?
7 A. Yes. He was Connie's oncologist at
8 Columbia.
9 Q. And if Dr. Stupler had reported in
10 the medical records that she quit smoking at age 32,
11 would that be a correct statement of fact?
12 MR. ROSENBERG: Objection, your
13 Honor.
14 THE COURT: Can you state the
15 grounds?
16 MR. ROSENBERG: I'm sorry. I think
17 number one, it's vague. Number two, it's
18 speculative, and he's asking him to comment on --
19 THE COURT: May I have a side-bar a
20 minute?
21 (There is a side-bar conference
22 outside the hearing of the jury.)
23 THE COURT: Is your mike off?
24 MR. PATRICK: Yes. Charles assures
25 me.
Mehlman-Direct/Patrick 2438
1 MR. ROSENBERG: He's asking one
2 witness if -- he's asking this fact witness to
3 comment on a statement in the medical records that
4 isn't evidence. He's already given his testimony as
5 to 1975, and it's essentially almost argumentative.
6 In the sense he's saying, well, you've given this
7 piece of evidence, how does it compare to this piece
8 of evidence.
9 MR. PATRICK: I'll rephrase it.
10 THE COURT: I think the problem is
11 where he's not in any superior knowledge to say
12 anything else. So if you rephrase it, the fact, is
13 that your understanding, I think that takes that
14 away, okay?
15 (The following takes place in open
16 court.)
17 Q. Dr. Mehlman, do you recall Connie
18 being treated by Dr. Stupler?
19 A. Yes, I do.
20 Q. And what was her condition at the
21 time Dr. Stupler was taking his notes about her
22 medical condition?
23 A. She was under extremely heavy
24 sedation. She was incoordinated. I was there 100
25 percent of the time when she was in Columbia. In
Mehlman-Direct/Patrick 2439
1 fact, she was in pain, and I constantly had to
2 search out the nurses to administer her pain
3 medication more often than it did -- in fact, I
4 called her pulmonologist and had her pulmonologist
5 call the nurses and authorize to give more frequent
6 medication because she was in pain.
7 THE COURT: I sorry. Uncoordinated
8 or incoherent?
9 MR. PATRICK: I don't know.
10 THE WITNESS: She was drowsy, like,
11 and incoherent from time to time.
12 Q. Now, Dr. Mehlman, once again, I would
13 like to take you back in time, and I would like you
14 to focus on the period from 1960 to the mid 1970s
15 when you were working and continuing your education.
16 Now, let me ask you this: What is

17 your specialty?
18 A. My training is in biochemistry and
19 subsequently in toxicology.
20 Q. And have you, Dr. Myron Mehlman, have
21 you focused on and studied the health effects of
22 cigarette smoking?
23 A. No.
24 Q. And why is that? You're a
25 toxicologist, can you explain that?
Mehlman-Direct/Patrick 2440
1 A. Initially, I was specialized in very
2 narrow area of biochemistry which dealt with
3 disease, more specifically gluconeogenesis, which
4 means how the body makes and breaks down sugar.
5 Sugar is essential for function of your brain, and
6 produces energy to keep you -- keep your body
7 functioning. And in addition, I work with even
8 highly specialized area of biochemistry which is
9 microconidial metabolism which is subfraction of our
10 cells, human body cells that generates energy.
11 Q. Now, I want you to tell us about your
12 marriage, and I would like to begin with when you
13 were married?
14 A. September 4, 1960.
15 Q. This is No. 8 in the series,
16 Dr. Mehlman. Can you tell us about the time you
17 were married?
18 A. That's our wedding picture.
19 Q. All right. Did you have a groomsmen,
20 and she had bride's maids? What was your wedding
21 like?
22 A. Yes. We had over a hundred people,
23 and I invited at least eight or nine people of my
24 friends that I served in the service that we
25 commuted constantly. They were at the wedding with
Mehlman-Direct/Patrick 2441
1 their either girlfriends or wives and fiances, and
2 Connie did the same.
3 Q. And did you have a honeymoon?
4 A. Very short. We went Upstate New York
5 for two days, about two or three hours a way from
6 New York City, because it was September, and I had
7 to board to start graduate school in Urbana,
8 Illinois which started September. So we drove to
9 Urbana.
10 Q. And where was this graduate school in
11 Urbana, Illinois?
12 A. The University of Illinois.
13 Q. The University of Illinois?
14 A. Yes.
15 Q. And did there come a time that you
16 had a child -- you and Connie had a child in
17 Illinois?
18 A. Yes. In January 1962 our first
19 daughter Mara was born.
20 Q. And after Mara's birth, did you move
21 away from Illinois?
22 A. Yes. My thesis advisor, George
23 Wolfe, obtained a position at Massachusetts
24 Institute of Technology. I applied for a National
25 Institute fellowship and I was awarded, and right
Mehlman-Direct/Patrick 2442
1 after Mara was born we -- the whole family moved to

2 Massachusetts -- Cambridge, Massachusetts.
3 Q. So you and Connie and Mara picked up
4 and moved to Cambridge?
5 A. Yes.
6 Q. Can we see No. 9 please. This is
7 No. 9 is in the photographs, Dr. Mehlman. Can you
8 tell us who these two folks are?
9 A. Yes. This is Connie and Mara in
10 Cambridge, Massachusetts around Harvard Square.
11 Q. And can we go to No. 10 please, and
12 who is this?
13 A. It was still Mara. When I came home
14 early I would help Connie bathe Mara.
15 Q. And despite the fact that you were
16 continuing your education at Cambridge, did you
17 participate in family activities such as these?
18 A. Yes. I had a night job. Whenever
19 the baby would get up, it was my job to diaper and
20 feed the baby so Connie could get rest and take care
21 of the children -- at this time it's still one,
22 during the day.
23 Q. Next one please. No. 11, who is
24 that?
25 A. That's Mara. That's typical Mara,
Mehlman-Direct/Patrick 2443
and Connie, of course.
1 Q. Where was this picture taken?
2 A. That was in Cambridge, Massachusetts.
3 First we had an apartment on Harvard Street, and
4 then we moved to graduate student houses close to
5 Charles River.
6 Q. No. 12, please. And who are these
7 people?
8 A. This is myself and Mara when she was
9 a baby.
10 Q. You can't see it on this picture, but
11 there's over to one side an indication, I believe
12 it's December 1962. In December of 1962 were you in
13 Cambridge, Massachusetts?
14 A. No. It seems to be like it's
15 Cambridge, but I got -- Mara wasn't born until
16 January '62 -- December '62, of course. I'm
17 confused by a year.
18 Q. Okay. So she was about 11 or 12
19 months old by then?
20 A. Oh, yes. She was pretty old, yes.
21 That's Cambridge. Now I recognize.
22 Q. Can you tell me what your life was
23 like, your life and Connie's life back in Cambridge
24 in the early 1960s?
25 Mehlman-Direct/Patrick 2444
1 A. It was fun. As a graduate student we
2 were -- there were many graduate students, and
3 living in the graduate house were in the same
4 position. When I went to work -- going to school is
5 really like going to work. I leave early, come back
6 late, because I was not only taking courses, I was
7 doing my thesis research so I can finish faster.
8 We had a lot of friends. She would
9 go out with the baby with her friends. She would
10 have a lot of fun. We would go out from time to
11 time, or we would buy stuff and one of the family's
12 would cook it and we would share meals.

13 Q. No. 13, please. Actually, it would
14 be the next one. Now we're on the right picture.
15 Can you tell us who this is and where
16 this picture was taken?
17 A. Yes. This is Connie with Mara in the
18 carriage, and this is along the Charles River.
19 Boston is on the other side, and we only lived a
20 block or so away from Charles River and this walk.
21 Q. No. 16, please.
22 A. This is Connie and myself in 1962.
23 Q. Next please. Where was this picture
24 taken, Dr. Mehlman?
25 A. To the best of my recollection, it
Mehlman-Direct/Patrick 2445
1 looks like at Connie's mother's apartment. That
2 would have been in New York.
3 Q. And this would also be in the early
4 1960s?
5 A. Yes.
6 Q. Now, I believe if you look at
7 Connie's right hand, she may be holding something.
8 Can you tell us what that is. She is holding a
9 cigarette? Was Connie allowed to smoke in her
10 mother's apartment?
11 A. Yes. Her mother lived with her Aunt
12 Sophie, and Sophie was very heavy smoker. In
13 addition, her brother, who wasn't there at that
14 time, was extremely heavy smoker.
15 Q. And I believe you said at some point
16 in time in your marriage you began to tolerate
17 Connie's smoking?
18 A. I pretty much tolerate it from the
19 beginning, otherwise, we would have never gotten
20 together.
21 Q. Now, while you were in Cambridge, did
22 there come a time that you had another child?
23 A. Yes. As soon as I graduated from
24 MIT, 1964, Hope was born.
25 Q. This is No. 18. Can you tell us what
Mehlman-Direct/Patrick 2446
1 this picture is?
2 A. That's on my graduation day. It was
3 Connie and I when I got my Ph.D. degree from MIT.
4 Q. And had Connie had her baby yet?
5 A. Not yet. She's pregnant there.
6 Q. And when she gave birth, what
7 daughter did she give birth to?
8 A. Hope, who is sitting out there and
9 looking at me.
10 Q. And Hope is in the courtroom?
11 A. Yes.
12 Q. Now, it was in 1964 then that you
13 received your Ph.D. degree from MIT, Massachusetts
14 Institute of Technology?
15 A. Yes.
16 Q. And after you received your degree,
17 did you and your family -- you're now you and Connie
18 and your two children, did you move yet again?
19 A. Yes. While I was in school, I did my
20 two weeks military duty -- before I left service I
21 was also commissioned, and I spent two weeks at
22 Natick, Massachusetts, and they invite me to go and
23 work at the Surgeon General's laboratories on

24 glucose metabolism.

25 Q. Now, when you were working at the
Mehlman-Direct/Patrick 2447

1 laboratories were you working on these Surgeon
2 General's reports on smoking a health?

3 A. No. I was working on choriogenesis,
4 how the body maintain's its heat, when one is put in
5 a very cold environment, such as in a plane when you
6 have no heat or in the winter.

7 Q. After that position did you move yet
8 somewhere?

9 A. Yes. I already had my NIH fellowship
10 to go to the University of Wisconsin for additional
11 studies at the Institute for Environmental Research.

12 Q. And how long were you in Wisconsin?

13 A. At least a couple of years, '66, and
14 '67.

15 Q. And did Connie like being in
16 Wisconsin?

17 A. Wisconsin we liked. We lived in
18 faculty houses. They were not expensive. They were
19 very nice houses, and she had friends, and she was
20 always kept busy. She was very happy in Wisconsin.

21 Q. Now, did there come a time after your
22 time of your educational duties that Wisconsin that
23 you moved yet again?

24 A. We moved again. I accepted the
25 permanent position at Rutgers University in
Mehlman-Direct/Patrick 2448

1 biochemistry where I was Associate Professor of
2 Biochemistry with tenure. And we relocated. I
3 worked at Newark, New Jersey.

4 Q. And while you were in this position,
5 did Connie become pregnant again?

6 A. Yes. In 1968 she became pregnant
7 with our third daughter Allison.

8 Q. And I believe you said she may have
9 stopped smoking while she was pregnant with Allison?

10 A. She did stop smoking. I haven't seen
11 any cigarettes during the entire period of her
12 pregnancy.

13 Q. And after Allison was born, did you
14 and your family -- this now including the three
15 daughters including Allison, move again?

16 A. Yes.

17 Q. And where did you move to?

18 A. Omaha, Nebraska.

19 Q. And what do you do in Omaha?

20 A. I was professor of biochemistry, and
21 I taught in medical school, medical students,
22 graduate students and I did a lot of research.

23 Q. And I believe you've told us that at
24 that point Connie relapsed?

25 A. She smoked as soon as we got to
Mehlman-Direct/Patrick 2449

1 Omaha. She didn't particularly like Omaha.

2 Q. And you had some friends who also
3 smoked?

4 A. Most of our friends were physicians,
5 faculty members, professors, associate professors in
6 different departments, pediatric and internal
7 medicine. Many of them smoked and their wives
8 smoked, so she felt they smoked, that's okay. Plus

9 people in the Cancer Research Institute smoked, so
10 she at a time -- she was continually smoking in
11 Omaha.

12 Q. How long were you in Omaha, Nebraska?
13 A. Until 1972.

14 Q. And then where did you go?
15 A. I took a leave -- one of the
16 professors that I had at MIT was head of the
17 Division of Toxicology in Washington, DC, Food and
18 Drug Administration, and he was thinking about
19 retiring, so he asked me to come and join him see if
20 I liked that, and I joined the Food and Drug
21 Administration as Chief of Biochemical Toxicology.

22 Q. And how long were you with the Food
23 and Drug Administration?
24 A. About a year, year-and-a-half.

25 Q. And was there another job that you
Mehlman-Direct/Patrick 2450
1 had or took on in the Washington area?
2 A. Yes. The Commissioner of Food and
3 Drug Administration, Charles Edwards, the director's
4 name was Leo Friedman, this is Charles Edwards
5 wanted me to come and work that his office, in the
6 commissioner's office. At the same time, shortly
7 thereafter, he became Assistant Secretary for Health
8 in the office of the Secretary of Health, Education
9 and Welfare with the responsibility of all the
10 health agency which means Centers for Disease
11 Control, NIH. And so I joined him, which was across
12 the street, which is actually just like, we had a
13 fire drill today, walked across the street. And I
14 was special Assistant for Toxicology, Nutrition and
15 Environmental Affairs.

16 Q. Now, you mentioned something about
17 the NIH, which is the National Institutes of Health?
18 A. Yes.

19 Q. And did you move into that position
20 shortly after this last job you just described?
21 A. In 1975 I transferred -- that was one
22 and the same department. It's Department of Health,
23 Education and Welfare. I joined National Institutes
24 of Health in the office of director of NIH with a
25 special responsibility to identify biochemical
Mehlman-Direct/Patrick 2451
1 problems and develop solutions. I have memo to that
2 effect, and I reported directly to the directors of
3 the institutes.

4 Q. Did this move to the NIH have any
5 relevance or any connection to Connie's smoking
6 habits?
7 A. Well, when I joined National
8 Institutes of Health, I had more time, and we lived
9 close by. I could get to work in 15 minutes rather
10 than going to Washington, which could take anywhere
11 between an hour and two hours depending on the
12 traffic. So I spent more time at home. And then we
13 got to -- we met many people at NIH. We were very
14 friendly with some of the division directors and
15 institute directors.

16 Q. So it was this period of time that
17 you were able to take a little more time and take
18 that karate class that you described earlier?
19 MR. ROSENBERG: Objection, leading.

20 MR. PATRICK: I'm sorry. Let me see
21 if I can rephrase it.
22 THE COURT: He'll rephrase it.
23 Q. Dr. Mehlman, what type of activities
24 did you and Connie engaged in in the 1975 time
25 frame?
Mehlman-Direct/Patrick 2452
1 A. Well, we were going out to dinners.
2 We had parties. We had friends over. Connie was
3 always commuting with the kids. And one of the
4 things that I became interested with Connie was in
5 taking the karate course with Dr. Tom Malone who was
6 black belt karate. And he enjoyed it a lot so he
7 gave courses in the area.
8 Q. Now, do you recall at any time in the
9 1975 time frame while you were at the NIH Connie
10 ever smoking a cigarette? Do you recall any
11 instance of that?
12 A. Yes, I do. I do recall because when
13 we went to take the lessons, Connie lit up a
14 cigarette and she start coughing, and Dr. Malone --
15 Q. Don't tell me what he told you.
16 A. Tom spoke to her. I just observed.
17 He didn't tell me anything. And they spoke for
18 awhile. Because my impression is that he felt that
19 he's taking karate and dedicating yourself, you have
20 to have deep breaths, and you cannot continue
21 smoking. Whatever he told her --
22 MR. ROSENBERG: Objection, hearsay.
23 THE COURT: Okay.
24 Q. Let's stay away from that right now,
25 Dr. Mehlman. While you were with the government,
Mehlman-Direct/Patrick 2453
1 and this is the NIH time frame, were you allowed
2 more free time to do things on your own?
3 A. Yes.
4 Q. All right. If we can see No. 19,
5 please. Dr. Mehlman, what does photograph No. 19
6 represent?
7 A. We took a vacation. I think it's one
8 of the few vacations that we got, went together, and
9 went to Caribbean for a week.
10 Q. If you look back, we're -- I believe
11 this is in 1976?
12 A. I believe so.
13 Q. And I believe if you look back at the
14 past 16 years, were you able, or could you even
15 afford to take vacations to the Caribbean?
16 A. No. Only when the children were a
17 little older and when I went to NIH, then I was able
18 to take my rare vacation.
19 Q. All right. Now, you've told us about
20 your movements -- your moves through the country and
21 your various jobs. Can you tell me how Connie felt
22 about this, all of this moving around that you and
23 your family did?
24 A. She preferred more stability, but
25 whenever we moved, she met new people, and she made
Mehlman-Direct/Patrick 2454
1 a lot of friends, and there was pretty good social
2 activity. Midwest, she didn't particularly like.
3 She liked the East Coast. She liked Wisconsin. She
4 liked Maryland. She liked New Jersey. We came back

5 twice. We really liked New Jersey. We had a lot of
6 friends and we spent most of our life here actually.
7 Q. So did there come a time in 1976,
8 toward the end of 1976, that you assumed a position
9 here in New Jersey?
10 A. Yes. At the end of 1976, I start
11 working, went on the payroll actually, in early '77.
12 Q. And what was this job?
13 A. Director of Toxicology and
14 Environmental Health at Mobil Oil Corporation.
15 Q. Can you tell us what you did, your
16 job responsibilities and your duties and experiences
17 at Mobil beginning at the end of 1976, 1st of '77?
18 A. Initially, I was responsible for the
19 toxicology function and industrial hygiene function,
20 which means they had to -- the industrial hygienist
21 had to find out what is the exposure level of the
22 various toxic chemicals in Mobil's manufacturing
23 facilities and recommend corrections when we needed.
24 The toxicology section, I was given resources and
25 money to build a toxicology laboratory which was in
Mehlman-Direct/Patrick 2455
1 Princeton, New Jersey. We chose that location. And
2 very large staff. We built up to about 160 people.
3 The objective was very simple, to
4 develop methods for testing and do a lot of
5 toxicology testing for their products. Basically, I
6 can summarize in two words. We had to know the
7 toxicity of the products and help disclose.
8 Q. Are you familiar with a publication
9 called Mobil World?
10 A. Yes, I am.
11 Q. And what is Mobil World?
12 A. Mobil World is internal company
13 publication that reports on people and activities of
14 Mobil Corporation.
15 Q. Have you ever been quoted in Mobil
16 World?
17 A. Several times.
18 Q. And in October of 1978, did you
19 receive or did Mobil receive a letter commenting on
20 one of the quotations or one of the statements that
21 you made from Mobil World?
22 A. Yes.
23 Q. Can we see 2582 which is in evidence?
24 Dr. Mehlman, this is a document dated
25 October 17, 1978 from The Tobacco Institute. Do you
Mehlman-Direct/Patrick 2456
1 so it on the screen?
2 A. I believe it's October 19, 1978.
3 Q. Yes, 1978. And do you see that it's
4 addressed to Mr. Joseph V. Moronto?
5 A. Yes.
6 Q. And did you know him?
7 A. I'm sorry?
8 Q. Did you know that he was affiliated
9 with this Mobil World magazine?
10 A. Yes. He was -- excuse me, the
11 manager of publication of that magazine.
12 Q. Okay. Can we see the first
13 paragraph? It says, and it's from Mr. Kloepfer from
14 The Tobacco Institute, and it says --
15 THE COURT: Excuse me. Your

16 microphone is off -- it's not.

17 Q. And it says, "Your publication Mobil
18 World is certainly one of the best in its field from
19 the standpoint of contents and graphics. There is,
20 however, a little flaw in the June 1978 issue which
21 I've just seen." At page 11, Dr. Mehlman, and is
22 that you?

23 A. Yes.

24 Q. All right. "Dr. Mehlman is quoted as
25 saying, quote, Cigarette smoking causes about a
Mehlman-Direct/Patrick 2457
1 third of all cancer deaths. Your industry and ours
2 are confounded with constant charges of
3 carcinogenicity of our products. I think it's
4 unbecoming for our defenses to be mounted in the
5 field of conjecture rather than facts. Dr. Mehlman,
6 in fact, has no way of knowing for sure whether
7 cigarette smoking causes any cancer, and if so, how
8 much. We don't know if Mobil products cause any
9 cancer, and if so, how much. The evidence in both
10 cases is sufficiently faulty so as to suggest that
11 conclusions such as his are at the very least
12 premature."

13 Now, Dr. Mehlman, did you come to
14 receive a copy of this document or letter?

15 A. Yes.

16 Q. And have you maintained it in your
17 files over the course of time?

18 A. Yes. And I used it with Mount Sinai
19 and all the faculty members, to teach the residents
20 and medical students.

21 Q. And this was in 1978, and I believe
22 Connie had stopped smoking for some period of time?

23 A. Yes.

24 Q. Now, when you were with Mobil Oil,
25 were you able to go traveling and -- in fact, travel
Mehlman-Direct/Patrick 2458
1 with Connie?

2 A. Yes. That was part of my job, and
3 they also encouraged that I take her with me on long
4 trips.

5 Q. All right. Can we go to picture 22,
6 first.

7 All right. This is whom?

8 A. This is Connie and myself in front of
9 Taj Mahal, one of the seven wonders of world.

10 Q. And did this trip have any connection
11 with Mobil Oil?

12 A. Yes. They have paid for Connie and
13 me to travel to New Delhi where I worked with Mobil
14 individuals from about ten different countries, with
15 Indian National Academy of Science, and related to
16 the Union Carbide Bopol accidents where killed 2500
17 people as a result of that accidental release -- and
18 injured over 100,000 people, very toxic chemical was
19 released.

20 Q. Well, in the course of your traveling
21 over to India for that, did you and Connie have a
22 chance to go sight-seeing and do things not
23 necessarily connected with the exact purpose of your
24 trip?

25 A. Yes. This is an example. We took
Mehlman-Direct/Patrick 2459

1 sometime after and we went to several places.
2 Q. All right. Can we see 20. Can you
3 identify this picture for us, please?
4 A. Yes. This is Connie and our three
5 daughters.
6 Q. And can you tell them going from left
7 to right, who the daughters are?
8 A. Mara, the oldest; Hope, middle
9 daughter; Allison, the youngest; and Connie and
10 myself.
11 Q. All right. Can we go to 23. And
12 this is you and Connie?
13 A. Me at Nassau Inn in Princeton, New
14 Jersey. We had the dinner for Hope got married. I
15 think this is in 1989.
16 Q. And this is in May of 1989 if you can
17 recall. We may have to ask Hope about this?
18 A. I think she has better memory.
19 THE COURT: Or you can look at the
20 bottom of the picture where it says May 28th, 1989.
21 MR. PATRICK: Some of us are more
22 observant than others. Your Honor, at this point
23 we're going into another area with Dr. Mehlman.
24 THE COURT: Take a ten minute break
25 at this point. Folks take a ten minute break, okay.
Mehlman-Direct/Patrick 2460
1 (The jury is excused.)
2 THE COURT: I'm really sorry. I saw
3 it there. I thought you were alluding to it. I
4 didn't mean to eclipse you.
5 All right. Ten minutes.
6 (A recess is taken.)
7 THE COURT: All right. The
8 administrator was in here and I'll point him out to
9 you, Mr. Kraus, and you can make your personal
10 application. I was in at eight o'clock this
11 morning.
12 MR. KRAUS: I would second that, your
13 Honor.
14 THE COURT: Doctor, I'll invite as
15 you, as I have the ladies and gentlemen, if you wish
16 to remove your jacket. I have explain to the jury,
17 it is not meant as any offense. I made my call
18 early this morning. I just don't know what to tell
19 you.
20 I'm worried if we put more fans in,
21 we'll blow the computers.
22 (The jury enters the courtroom.)
23 THE COURT: All right. Thank you
24 very much. All be seated. Let's continue.
25 MR. PATRICK: Thank you, your Honor.
Mehlman-Direct/Patrick 2461
1 Q. Now, Dr. Mehlman, I believe you left
2 off in May -- all right.
3 Now, Dr. Mehlman, I believe we left
4 off in May of 1989. Correct?
5 A. Yes.
6 Q. All right. Now, until 1989, did
7 Connie embark upon a new direction, so to speak? A
8 new career?
9 A. Yes. She applied and got admitted to
10 a law school. It was in Newark, Seton Hall Law.
11 She started in September of 1989.

12 Q. And were you supportive of her new
13 endeavor, her endeavor to go to law school and get
14 her law degree?

15 A. Yes. I thought was very great.

16 Q. And also in 1989, November of 1989,
17 did something happen with respect to your position
18 at Mobil Oil?

19 A. Yes. I was sent to Japan to
20 participate in --

21 Q. Let me stop you right there. In
22 November, the end of 1989, did you lose your job at
23 Mobil?

24 A. Yes.

25 Q. All right. Can you tell me what the
Mehlman-Direct/Patrick 2462
1 events were that led up to your termination as
2 Director of Toxicology and Environmental Affairs at
3 Mobil Oil?

4 A. In September of 1989, I went to Japan
5 to present a paper at the International Conference
6 on Environmental Issues in Developing Nations, Risk
7 Assessment and Risk Management. At the same time
8 when I was going there, I was invited by the
9 Japanese Health Ministry to speak to the directors
10 about environmental issues and climate change. In
11 addition, I was invited to speak to Japanese
12 Environmental Protection Agency.

13 On the way there, I was asked to
14 speak to Mobil management, Mobil Japan. Mobil Japan
15 Oil Company produces about 50 percent of all the
16 gasoline in Japan, and it's extremely profitable.
17 When I got to talk there, and I met with managers in
18 a small conference room, I presented my slides which
19 I was going to present at the international
20 conference, and the subject matter was benzene.

21 Before I left for Japan, I obtained
22 the benzene level in Mobil gasoline from our
23 international division. They are about
24 three-and-a-half percent and I was planning to speak
25 to them asking them to reduce to one or less
Mehlman-Direct/Patrick 2463
1 percent, which was about to happen in the United
2 States.

3 THE COURT: I'm sorry. What was the
4 first percentage?

5 A. Three-and-a-half percent. In US, in
6 1992, in accordance with Clean Air Act, we had to
7 reduce benzene level in gasoline to one percent.
8 Everybody knows benzene is a very potent carcinogen
9 and causes all kinds of leukemias, lymphomas,
10 neoplasias, Hodgkin's disease, and many illnesses
11 related to blood.

12 One of the technical managers got up
13 and said, "Your levels of benzene are incorrect.
14 This is not our levels." I said, "What are your
15 levels?" He said, "5.7 percent and maybe higher."
16 So I suggested -- I said, "These levels are very
17 high. You need to do something about it." So he
18 turned around and told me, "We cannot. We have all
19 obsolete equipment from second world war, and to do
20 that it will cost us millions of dollars." So I
21 told them right up front, "Well, if you don't do it,
22 stop selling the gasoline." There was total

23 silence, and after that I left.
24 Two weeks later when I came back to
25 New York, I received a call from my supervisor who
Mehlman-Direct/Patrick 2464
1 was vice president. He read a memo to me. He told
2 me that I cannot go to Mobil facility to my office,
3 and they conducting some kind of investigation and
4 they will get back to me.
5 Since then I have never been to Mobil
6 facility. I have never been to my office. That's
7 in 1989.
8 Q. And Dr. Mehlman, ultimately, you were
9 terminated from Mobil?
10 A. November 1, yes.
11 Q. And as a result of the termination,
12 did there come a point in time that you instituted
13 litigation, a lawsuit against Mobil for wrongful
14 termination?
15 A. Yes.
16 Q. And ultimately, after a long period
17 of time, did you prevail -- or what was the outcome
18 of that lawsuit?
19 A. Well, I won jury verdict, unanimous,
20 Appellate Division and Supreme Court. I prevailed.
21 Q. Now, when you were terminated from
22 Mobil, what was Connie's reaction?
23 A. She was very disappointed and upset
24 at that time. She was in school. We had kids in
25 school. There were a lot of tuitions to pay and
Mehlman-Direct/Patrick 2465
1 mortgage, of course.
2 Q. And what was her relationship to you,
3 and did that change? Was she supportive or did she
4 feel like you had done something?
5 A. She was very supportive. She
6 attended most of the depositions, about 40. She
7 went through a big trial. She sat through two or
8 three weeks through trial with me, and she helped me
9 prepare documents.
10 Q. Now, Dr. Mehlman, in your life and in
11 yours and Connie's life, I believe this brings us up
12 until 1990, can you describe for me and the court
13 and jury what it was like the last seven years of
14 Connie's life, 1990 to 1997, in general terms?
15 A. Well, they were primarily very good
16 times, and like any other marriage we had our
17 children were getting married. She was totally
18 involved in the preparation for weddings and making
19 sure that everything was right.
20 We also had grandchildren during that
21 period of time. We had -- Hope had Haley. She was
22 totally attached to Haley. I mean, Haley was her --
23 was it. She couldn't get over it. Mara had
24 children, and all the girls got married. She was
25 pretty excited about it. Plus the fact, I never
Mehlman-Direct/Patrick 2466
1 seen her so happy when she graduated from law
2 school.
3 Q. Let's stop right here, let's go to
4 picture No. 24. You talked about graduation. Who
5 is this and where is the graduation taking place?
6 A. This is Hope graduating from law
7 school, Seton Hall, 19 -- I believe it's -- I'm

19 they graduated from school, for the two of you to
20 travel even more, more frequently?

21 A. Oh, yes. We were planning to travel
22 many places, and especially take the grandchildren
23 to different places. They would enjoy it very much.

24 Q. How many grandchildren did you have
25 prior to Connie's passing away? I don't mean to put
Mehlman-Direct/Patrick 2469
1 you on the spot?

2 A. Before she passed away, it was three.
3 Hope was pregnant with Jonathan. She knew it was a
4 boy. It was first male in the family. So she knew
5 about four.

6 Q. And did Connie enjoy being around and
7 playing with her grandchildren?

8 A. She always did, especially with Haley
9 because she lived with us.

10 Q. How about you, did you enjoy being
11 with your grandchildren?

12 A. I brought her up. I mean, I don't
13 think Hope ever diapered her.

14 Q. Well, we'll have to find out from
15 Hope what the truth may be.

16 Can we go to the next picture please.
17 And Dr. Mehlman this is the last picture in our
18 series this morning, but can you tell me what this
19 picture is of?

20 A. Yes. This is Bologna Italy in a
21 small apartment. Mr. and Mrs. Carina there, and
22 Norton, Dr. Norton Nelson and his wife, and Connie
23 and myself. We are having a fantastic dinner, home
24 cooked dinner there.

25 Q. And these were the folks that you
Mehlman-Direct/Patrick 2470
1 were with -- were actually people that you worked
2 with professionally?

3 A. Norton Nelson, yes. The other two
4 people in Italy were parents of one of the students
5 that came -- not really a student. He had an MD
6 degree in pathology. He worked with me in
7 Princeton, and then I arranged for him to get a job
8 at Mount Sinai and Joint Disease as a pathologist.

9 Q. Well, we have heard in this trial the
10 testimony of Allison. We're to go hear as our last
11 witness your daughter Hope. But you had another
12 daughter and you mentioned her a few minutes ago,
13 Mara?

14 A. Yes, the oldest daughter.

15 Q. And will she be able to testify here
16 today --

17 A. No.

18 Q. -- in this trial?

19 A. No, because she had surgery. That
20 surgery was scheduled and postponed twice, and she
21 will not be able to come over.

22 Q. You talked about your plans and
23 Connie's plans for more travel. Were there any
24 other plans that you had in your life for what you
25 were going to do in your retirement days?
Mehlman-Direct/Patrick 2471
1 A. Yes. We were going to buy a place in
2 Florida someplace where we can bring the family
3 together, and they can spend time with us at least a

4 couple of months a year.

5 Q. And was there -- and you said
6 retirement. Would it be true you were planning to
7 work less than you had been working?

8 A. That's correct.

9 Q. And now, Dr. Mehlman, can you tell me
10 when Connie first became ill or sick with cancer?

11 A. In March of 1997.

12 Q. And can you tell me what happened in
13 and around that time that she was first diagnosed?

14 A. She had difficulty in breathing. We
15 thought it was pneumonia. I called Dr. Goldblatt.
16 We scheduled an appointment, and we came in. He
17 sent her to get chest X-ray. Then we came back
18 within a day or two, and very soon, as soon as he
19 looked at the X-ray, he immediately discussed her
20 smoking history again. And then he advised her that
21 most likely, he's not sure until the final tests are
22 done, that she has lung cancer.

23 MR. ROSENBERG: I'll object.

24 THE COURT: Sustained.

25 Q. Not telling us what Dr. Goldblatt
Mehlman-Direct/Patrick 2472
1 told you or Connie, just tell me what happened?

2 A. All right. We went to see
3 Dr. Goldblatt. He stated that -- I'm sorry.

4 Q. Let me see if I can rephrase the
5 question for you.

6 A. I understand. Let me try it again.
7 Chest X-rays show a tumor in her
8 lung. We made arrangements then to go into
9 immediate treatment, and we did it in Columbia
10 because Allison's father-in-law was head of a
11 department in Columbia. We get instant access to
12 Columbia, and they did diagnosis. They did variety
13 of tests. They hospitalized her, and they started
14 chemotherapy.

15 Q. What was her condition? What was the
16 condition of her health when she entered Columbia
17 Presbyterian Hospital in March 1997?

18 A. It was bad. She had difficulty in
19 breathing. She was in pain. It was very bad.

20 Q. And where were you? Where were you,
21 Dr. Mehlman, do you remember, this period of time?

22 A. All the time that she spent in
23 Columbia, I was with her except one night that I
24 went home to change, because they had a bed in the
25 same room where I could sleep.
Mehlman-Direct/Patrick 2473

1 Q. And where were your daughters during
2 this period of time?

3 A. They came, always came to visit her,
4 and they spent time with us.

5 Q. And did there come a point in time
6 that she was discharged or let out of the hospital
7 in New York City and brought back here to New
8 Jersey?

9 A. Yes. After period of time, a week or
10 so, maybe a little longer, she was discharged. We
11 brought her home. She continued her chemotherapy on
12 outpatient basis. I brought her maybe two at least
13 two or three times. She was hospitalized again.
14 She had difficulty in breathing to receive

15 chemotherapy. They sent -- they released her with
16 oxygen. She had to be on oxygen. And then a few
17 days later at home she collapsed. I called
18 emergency service. We had taken her to Princeton
19 Medical Center Emergency Room where they put her on
20 ventilator, and she stayed on ventilator until she
21 died.

22 Q. And you said she was put on a
23 ventilator. When she was on this ventilator, was
24 she able to communicate verbally with you?

25 A. She was not able to communicate
Mehlman-Direct/Patrick 2474
1 verbally with anyone. I was with her all the time.
2 They had reclining chairs. They permitted me to
3 stay in the room or outside the room. I spent three
4 weeks in that Intensive Care Unit.

5 Q. Were you there the entire time?

6 A. Entire time. Once or twice I would
7 go home, which is about ten minutes from the
8 hospital, would change and come back.

9 Q. Were your daughters also at the
10 hospital?

11 A. Yes. They spent a lot of time. Some
12 of them stayed with me overnight as much as they
13 could.

14 Q. Now, you said Connie couldn't
15 communicate with you verbally or talk to you,
16 because of this ventilator. Did she try or was she
17 able to communicate in a non-verbal fashion?

18 A. The first week she was able to write
19 limited notes. With great difficulty she did. And
20 after that, she couldn't do anything, the last two
21 weeks.

22 Q. Could you tell us about the
23 experience in that three weeks period of time that
24 you were at the Princeton Medical Center at the
25 hospital, and I believe you were sleeping actually
Mehlman-Direct/Patrick 2475
1 at the hospital, correct?

2 A. Every night.

3 Q. What was that experience like?

4 A. It was very unpleasant, because in
5 Intensive Care Unit most people do not leave. And
6 every time somebody dies, the bell goes off, and I
7 just -- I was sitting there and waiting for the
8 bell. I would say many, many people who were
9 admitted did not leave. And at least on June 13,
10 early in the morning, it was the final bell and
11 Connie is gone.

12 Q. Dr. Mehlman, what did it mean to you
13 to lose your wife?

14 A. Well, it was very stressful, because
15 it came so sudden. We weren't prepared.

16 Q. Dr. Mehlman, why are you bringing
17 this lawsuit?

18 A. I believe that Connie would want me
19 to do that.

20 MR. ROSENBERG: Objection.
21 THE COURT: It's his impression.
22 I'll overrule it.

23 A. Knowing what she felt and over these
24 years how she asked me many questions about --
25 MR. ROSENBERG: Objection.

1 THE COURT: Now stop.

2 Q. All right. Let's stop right there.
3 You can't tell us what Connie told you, so let me
4 see if I can ask you another question. What were
5 Connie's reading habits like?

6 A. She loved to read. She read widely.
7 And she read numerous magazines. She read books.
8 She would buy books and magazines, many of them.

9 Q. Dr. Mehlman, I'm going to show you a
10 book that is exhibit No. 77240.992, Smoking Motives
11 and Incentives by Dr. Dunn. Your Honor, may I
12 approach the witness please?

13 THE COURT: Sure.

14 Q. Dr. Mehlman, after Connie's death,
15 did you have a chance to inventory or go through the
16 books that Connie had purchased over the course of
17 her life?

18 A. During my deposition I was asked to
19 look at her -- what books she read and to bring some
20 in. And I went back and I looked, and I brought in
21 some books that she read.

22 Q. And I'll represent to you that that
23 book was published that 1973. Was '73 one of those
24 years when Connie was sort of struggling or in an
25 attempt to quit smoking cigarettes?

Mehlman-Direct/Patrick

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1 MR. ROSENBERG: Objection, leading.

2 THE COURT: Sustained.

3 Q. What were Connie's smoking habits in
4 the year 1973?

5 A. She smoked.

6 Q. And in the early to mid 1970s, did
7 Connie ever try to quit smoking?

8 A. Yes.

9 Q. And would Connie in your opinion
10 based on your knowledge of Connie and her interests
11 and habits have been interested in a book concerning
12 the motives or why people smoke cigarettes?

13 MR. ROSENBERG: Objection, specula --

14 THE COURT: Speculation, sustained.

15 Q. Dr. Mehlman, based your own personal
16 observations of Connie, and knowing her smoking
17 history, did she have any interest, whatsoever, in
18 cigarette smoking or issues concerning cigarette
19 smoking by the mid 1970s?

20 A. Yes.

21 Q. Now, I asked you a question earlier
22 on this morning, and I believe you may have
23 misunderstood me so I'm going to try to ask you
24 again, and let me see if I can phrase it so it's
25 understandable.

Mehlman-Direct/Patrick

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1 When you first met Connie in 1959,
2 based on your observations of Connie and based on
3 Connie's behavior, did you form a belief as to
4 whether Connie thought cigarette smoking was
5 addictive?

6 MR. ROSENBERG: Objection.

7 THE COURT: Let's hear this at
8 side-bar.

9 (There is a side-bar conference
10 outside the hearing of the jury.)

11 MR. ROSENBERG: Several bases. First
12 of all, this is calling for a speculative -- it's
13 calling for the witness to give a quasi-medical
14 opinion. It also is completely inconsistent with
15 the testimony of this witness already that she
16 thought it was addictive, which was the testimony
17 about an hour ago.

18 MR. PATRICK: I just think there was
19 an error in his testimony. I had asked the same
20 question. He said he thought -- he taught she
21 thought it was addictive. I think he thought that I
22 was asking whether or not she was addicted, and so
23 he responded incorrectly to my question.

24 MR. ROSENBERG: Your Honor, also I
25 think it is a form of hearsay. It's like the person
Mehlman-Direct/Patrick 2479
1 opening the umbrella, which was the statement --

2 THE COURT: Do you just go around
3 remembering these examples, or do you make them up
4 on the spot. It's like right out of a horn book. I
5 thought you really had it on leading and hearsay.
6 That's why I wanted to bring you over to side-bar.
7 And the problem with this question is you've gone to
8 another area. Now you're going back and making the
9 assumption that he did not understand the question,
10 and the witness has not indicated that in any way,
11 and I think this is improper way to come back to it.

12 MR. PATRICK: I agree with that.
13 You're right about that. Let me see if I can go
14 about it in another way.

15 THE COURT: Will you be finished by
16 12:30.

17 MR. PATRICK: I'll be finished about
18 12 o'clock.

19 THE COURT: All right.
20 (The following takes place in open
21 court.)

22 Q. New question, Dr. Mehlman.
23 Dr. Mehlman, based upon your knowledge of Connie,
24 your marriage to Connie for 37 years, her concerns
25 about her health and well-being and her habits, do
Mehlman-Direct/Patrick 2480
1 you believe that Connie would have chosen to smoke a
2 cigarette that delivered no tar if one were
3 available in the 1960s?

4 MR. ROSENBERG: Objection, your
5 Honor. We have a compound question, and there are
6 several other bases that we can deal with at
7 side-bar.

8 THE COURT: Including speculation?
9 MR. ROSENBERG: Including
10 speculation.

11 THE COURT: On those grounds, I'll
12 sustain.

13 Q. Dr. Mehlman, based upon your 37 years
14 of marriage to Connie, your knowledge of her habits,
15 her concerns for her health, your personal
16 observations of Connie and the way she behaved in
17 the early 1960s, do you believe that she thought
18 cigarette smoking was addictive?

19 MR. ROSENBERG: Same objection, your
20 Honor.

21 THE COURT: Want to try it again?

22 Q. Dr. Mehlman, I believe you said you
 23 saw cartons of cigarettes that were purchased by
 24 Connie when she was smoking cigarettes?

25 A. Yes.
 Mehlman-Direct/Patrick 2481

1 Q. Prior to 1966, did you observe on the
 2 cartons or on the packages of the discarded
 3 cigarettes any warnings that cigarette smoking could
 4 cause cancer or was addictive?

5 A. No.

6 Q. Dr. Mehlman, I believe you knew me
 7 prior to Connie's death; is that correct?

8 A. Yes.

9 Q. And would it be fair to say that we
 10 had had a business relationship or a consulting
 11 relationship, me as a lawyer, you as a toxicologist?

12 A. Yes.

13 Q. And did there come a time when you
 14 consulted for one of the other law firms involved
 15 for you in this case, the Wilentz firm, Wilentz,
 16 Goldman and Spitzer?

17 A. Yes.

18 Q. And how did you come to know me, if
 19 you recall?

20 A. Professor Sellica of Mount Sinai
 21 introduced me to you.

22 MR. PATRICK: May I have a moment,
 23 your Honor?

24 THE COURT: Sure.

25 Q. Dr. Mehlman, did you know, in 1959
 Mehlman-Cross/Rosenberg 2482

1 that cigarette smoking was addictive?

2 A. No.

3 Q. Do you have any reason to believe
 4 that Connie thought cigarette smoking was addictive?

5 THE COURT: I'll overrule it, but
 6 make your objection.

7 MR. ROSENBERG: Objection.

8 THE COURT: I will allow that. That,
 9 I will overrule.

10 Q. Do you remember the question?

11 THE COURT: Do you have any reason to
 12 believe that Connie thought cigarette smoking was
 13 addictive?

14 A. No, I have no...

15 MR. PATRICK: Dr. Mehlman, thank you
 16 very much. I don't have any further questions.

17 THE COURT: Thank you. Can I see
 18 counsel at side-bar. I don't need the reporter.

19 (A discussion is held off the record
 20 and outside the hearing of the jury.)

21

22 CROSS-EXAMINATION BY MR. ROSENBERG:

23 THE COURT: Cross-examine.

24 Q. Thank you, your Honor. Good morning,
 25 ladies and gentlemen of the jury. Actually, just
 Mehlman-Cross/Rosenberg 2483

1 about good afternoon.

2 Good morning, Dr. Mehlman.

3 A. Good morning.

4 Q. Dr. Mehlman, I'm sorry for your
 5 family's loss.

6 A. Thank you.

7 Q. Now, you first met Mrs. Mehlman in
8 1959, is that correct, or 1960?
9 A. Yes.
10 Q. And at the time you met her you were
11 about 25 years old?
12 A. Yes.
13 Q. And you had graduated from the City
14 College of New York in a premed. program, correct?
15 A. Yes.
16 Q. And with a Bachelor of Science degree
17 in chemistry?
18 A. Yes.
19 Q. And you had also studied biology
20 while at CCNY?
21 A. Yes.
22 Q. And while you were in the premed.
23 program in CCNY you took courses like biology and
24 chemistry and organic chemistry; is that correct?
25 A. Yes.
Mehlman-Cross/Rosenberg 2484
1 Q. And you were very interested in
2 sciences even while in college?
3 A. Yes.
4 Q. You read what you could to keep up
5 with scientific developments?
6 A. No, I worked. I had very limited
7 time.
8 Q. Well, your professors in college
9 would include in their lessons advances in
10 scientific thinking, would they not?
11 A. No, because they used standard
12 textbooks, especially at night. They were pretty
13 tired too.
14 Q. So they wouldn't inform you of
15 advances in scientific thinking; is that your
16 testimony?
17 A. That's correct.
18 Q. Now, also by the time you met
19 Mrs. Mehlman, you had worked as a science technician
20 for about a year at the Albert Einstein School of
21 Medicine?
22 A. 1957, yes.
23 Q. You had already done that?
24 A. Yes.
25 Q. Doing some basic scientific research,
Mehlman-Cross/Rosenberg 2485
1 correct?
2 A. Yes.
3 Q. And then, as I think you testified,
4 from 1958 until 1960 you were in the Army Reserves,
5 right?
6 A. No. I was in the regular two year
7 military service.
8 Q. Military service, and your job was
9 researching the effects of toxic substances on human
10 beings and on animals, right?
11 A. Yes.
12 Q. And you studied the effect of several
13 substances such as LSD?
14 A. Yes.
15 Q. And nerve gases?
16 A. Yes.
17 Q. And other toxins, right?

18 A. Yes.
19 Q. Now, in 1960, you went to the
20 University of Illinois?
21 A. Yes.
22 Q. And that was from 1960 to 1962,
23 correct?
24 A. Yes.
25 Q. And by that time you had already met
Mehlman-Cross/Rosenberg 2486
1 and married Constance Mehlman?
2 A. Yes.
3 Q. And you actually married her in
4 September of 1960?
5 A. September 4, 1960.
6 Q. And at the University of Illinois,
7 you entered a postgraduate doctoral degree program
8 in biological sciences?
9 A. Yes.
10 Q. And that was to get a Ph.D.?
11 A. Yes.
12 Q. And that's a very highly advanced
13 degree, academic degree?
14 A. Yes.
15 Q. And then as you testified around
16 1962, you transferred from the University of
17 Illinois to the Massachusetts Institute of
18 Technology?
19 A. Yes.
20 Q. And that was to continue your Ph.D.
21 studies, right?
22 A. Yes.
23 Q. All right. And Massachusetts
24 Institute of Technology is also known as MIT?
25 A. Yes.
Mehlman-Cross/Rosenberg 2487
1 Q. And that's one of the most
2 prestigious schools of scientific learning in the
3 world, is it not?
4 A. It's one of the them, yes.
5 Q. One of them. And certainly at the
6 time it was?
7 A. I wouldn't know. I know one of the
8 better schools.
9 Q. And you were studying biological
10 sciences both at the University of Illinois and at
11 MIT, correct?
12 A. Yes.
13 Q. And biological sciences is the study
14 of living things and their vital processes; is that
15 not right?
16 A. Yes.
17 Q. That's essentially how things live?
18 A. Yes.
19 Q. That's a very broad area of science
20 that includes things like zoology, and botany, the
21 study of animals and the studies of plants, right?
22 A. Yes.
23 Q. But early in your academic career,
24 you decided to focus on a particular part of biology
25 called biochemistry?
Mehlman-Cross/Rosenberg 2488
1 A. Yes.
2 Q. And that field is concerned with

3 chemical substances and processes that occur in
4 living things?
5 A. Yes.
6 Q. Because chemicals are found in all
7 living things, including human beings, right?
8 A. Yes.
9 Q. And in fact, you focused your
10 academic endeavors even more carefully on human
11 biochemistry, correct?
12 A. Yes.
13 Q. And human biochemistry includes the
14 study of the chemicals that make up the basic parts
15 of human cells, right?
16 A. Yes.
17 Q. And it includes the study of
18 chemicals that play a key role in the chemical
19 reactions that are vital to life; is that not right?
20 A. Yes.
21 Q. Such as hormones and things like
22 that? Yes?
23 A. Yes.
24 Q. And includes the studies of all of
25 the complex interrelated chemical changes that occur
Mehlman-Cross/Rosenberg 2489
1 within cells?
2 A. Yes.
3 Q. It includes the study of chemicals
4 that are in our genes, such as DNA?
5 A. Yes.
6 Q. That's the sort of thing that you
7 were learning when you were studying biochemistry,
8 correct?
9 A. Yes.
10 Q. And I assume that while you were at
11 school you were trying to learn as much as you could
12 about biochemistry?
13 A. In my narrow field that I focused,
14 yes.
15 Q. Well, you were studying biochemistry
16 generally at the University of Illinois and at MIT,
17 were you not?
18 A. Yes.
19 Q. And I assume that when you were at
20 the University of Illinois and at MIT, your
21 professors would keep you current on major news in
22 the scientific world relating to biochemistry?
23 A. Within the scope of the course work,
24 yes.
25 Q. And your course work included the
Mehlman-Cross/Rosenberg 2490
1 general study of biochemistry both at the University
2 of Illinois and at MIT; is that not correct?
3 A. Yes.
4 Q. Now, you ultimately obtained your
5 Ph.D. from MIT in 1964, is that not right?
6 A. Yes.
7 Q. And you were in the Department of
8 Nutrition and Biology, is what it was called at the
9 time?
10 A. Yes. Nutrition and Food Sciences and
11 it had its name changed three times.
12 Q. Now, by the time you got your Ph.D.
13 from MIT, you had narrowed your focus even more from

14 human biochemistry to a subpart called toxicology;
15 is that correct?
16 A. No. Not at that time.
17 Q. You did that later?
18 A. Yes. I narrowed my scope to
19 intermediate metabolism and lipids, how they
20 transport fat, how they synthesize fat to produce
21 energy in the body or in the cells.
22 Q. And in order to be able to narrow
23 your focus, you had to have a basic understanding,
24 and indeed, an in depth understanding of human
25 biochemistry, generally; is that not correct?
Mehlman-Cross/Rosenberg 2491
1 A. Yes.
2 Q. Now, after you received your Ph.D. in
3 1964, you went to work for the Surgeon General's
4 office at the Natick; is that not right?
5 A. Yes.
6 Q. And you went from there to a teaching
7 position at the University of Wisconsin; is that
8 right?
9 A. No, that was a post-doctoral fellow
10 position in biochemistry.
11 Q. That was a post-doctoral fellow in
12 the Institute of Environmental Research?
13 A. Yes.
14 Q. Weren't you also teaching at the
15 University of Wisconsin at the same time?
16 A. No. I didn't have to teach. I spent
17 all my time doing research.
18 Q. And could you tell the jury what a
19 post-doctorate fellow is?
20 A. A person who gets his doctoral degree
21 and takes sometime out to develop skills in certain
22 areas so he can be more proficient.
23 Q. And from the University of Wisconsin
24 in 1967, you went to Rutgers?
25 A. Yes.
Mehlman-Cross/Rosenberg 2492
1 Q. Where you became a professor of
2 biochemistry; is that correct?
3 A. Associate Professor of Biochemistry.
4 Q. Associates Professor of Biochemistry
5 from September 1967 until May of 1969, correct?
6 A. Yes.
7 Q. And you taught biochemistry to both
8 undergraduate and graduate students at Rutgers?
9 A. Yes.
10 Q. So you were teaching a general
11 biochemistry course to the Rutgers students; is that
12 correct?
13 A. And laboratory courses.
14 Q. But it was general, it was not
15 focused only on your area of concentration; is that
16 right?
17 A. Yes.
18 Q. And you continued to do independent
19 research in toxicology and biochemistry when you
20 were at Rutgers?
21 A. Yes.
22 Q. And from there, in May of 1969 you
23 concluded teaching at Rutgers, and sometime
24 thereafter, you transferred to the University of

25 Nebraska; is that right?
Mehlman-Cross/Rosenberg 2493

1 A. Yes.

2 Q. When did you move to the University
3 of Nebraska?

4 A. '69.

5 Q. When in '69?

6 A. I don't remember.

7 Q. Sometime after May '69, I assume?

8 A. I don't remember.

9 Q. Is it fair to say that if you were
10 teaching in Rutgers through May of 1969, you left
11 for Nebraska after May of 1969?

12 A. I could be. I actually don't
13 remember the month.

14 Q. And you were at the University of
15 Nebraska from 1969 until 1972; is that correct?

16 A. Yes.

17 Q. And again, at the University of
18 Nebraska, you were a professor at a medical school;
19 is that right?

20 A. Yes.

21 Q. And you were teaching people who were
22 studying to become doctors?

23 A. Yes.

24 Q. And again, you continued to do
25 independent work and independent research on
Mehlman-Cross/Rosenberg 2494

1 biochemistry and toxicology?

2 A. Yes.

3 Q. And the research involved the study
4 of drugs and their mechanisms; is that right?

5 A. Yes.

6 Q. And you also during that time looked
7 at the mechanism of disease causation; is that
8 correct?

9 A. To some extent, yes.

10 Q. And from Nebraska you went to the
11 Federal Food and Drug Administration in Washington,
12 DC; is that right?

13 A. Yes.

14 Q. And that was 1972?

15 A. Yes.

16 Q. And based upon your experience to
17 that point, you were named as Chief of Biochemical
18 Toxicology at the Federal Food and Drug
19 Administration; is that right?

20 A. I started at that level, yes.

21 Q. And from there you went to the
22 Department of Health, Education and Welfare?

23 A. Yes.

24 Q. Where you chaired a subcommittee on
25 carcinogenic standards?
Mehlman-Cross/Rosenberg 2495

1 A. Among other committees, yes.

2 Q. And that entailed the studies of the
3 causes of cancer?

4 A. Yes, that was in 1973-74.

5 Q. So during the time that you and
6 Mrs. Mehlman were together and she smoked you were a
7 graduate of premed. program at CCNY, correct?

8 A. Yes.

9 Q. You were a former medical technician

10 at Albert Einstein School of Medicine, correct?
11 A. Yes.
12 Q. You were a researcher in the Army --
13 for the Army on the effect of toxic substances on
14 humans, correct?
15 A. Yes.
16 Q. You were pursuing a master's degree
17 in toxicology at the University of Illinois?
18 A. Yes.
19 Q. And you were getting your Ph.D. in
20 biochemical sciences in MIT?
21 A. Yes.
22 Q. You were working at the Surgeon
23 General's laboratories in Washington?
24 A. Not in Washington.
25 Q. At Natick?
Mehlman-Cross/Rosenberg 2496
1 A. Yes.
2 Q. You were getting a post-doctoral
3 teaching position in biochemistry at the University
4 of Wisconsin?
5 A. I wasn't teaching.
6 Q. You were studying in University of
7 Wisconsin?
8 A. Yes.
9 Q. And you were teaching biochemistry at
10 Rutgers?
11 A. Yes.
12 Q. You were teaching biochemistry at the
13 University of Nebraska Medical School?
14 A. Yes.
15 Q. You were Chief of Biochemistry
16 Toxicology at the Food and Drug Administration?
17 A. Yes.
18 Q. And you were chairman of a
19 subcommittee on carcinogenic standards at the United
20 States Department of Health, Education and Welfare?
21 A. Yes.
22 Q. And by the way, you've continued your
23 scientific career since 1976; is that right?
24 A. Yes.
25 Q. After you left the Department of
Mehlman-Cross/Rosenberg 2497
1 Health, Education and Welfare, you went to the
2 National Institutes of Health?
3 A. Yes.
4 Q. And you also after you talked about
5 working at Mobil until 1989 and you talked about
6 your lawsuit at Mobil and you talked about the
7 litigation; is that correct?
8 A. Yes.
9 Q. And in fact, Mr. Patrick asked you
10 whether you had won the litigation, and you said you
11 had; is that correct?
12 A. Yes.
13 Q. And in fact you received a sum of
14 money for that; is that correct?
15 A. Yes.
16 Q. And the judgment was in what amount,
17 doctor?
18 A. Judgment was \$7 million.
19 Q. And since you left Mobil, you have
20 been doing consultancy, correct? Yes?

21 A. Yes.
22 Q. And you've recently been serving as
23 an expert witness in lawsuits?
24 A. Very little. I work mostly for free.
25 I testified for many states on reformulated
Mehlman-Cross/Rosenberg 2498
1 gasoline, and I focus on that, and no one paid me
2 for that. I put in 90 percent of my time on that
3 subject matter.
4 Q. But you've served as an expert
5 witness at least 20 different times in lawsuits; is
6 that correct?
7 A. Yes, that's correct. Over a ten year
8 period.
9 MR. ROSENBERG: Your Honor, this time
10 is a good time to break.
11 THE COURT: Okay. Very well. Ladies
12 and gentlemen, if you leave your notebooks down, we
13 will resume later this afternoon. Please go out and
14 get some fresh air, stock up on your water, come
15 back and don't discuss the case.
16 (The jury is excused.)
17 THE COURT: Doctor, you may step
18 down.
19 Are you and Mr. Klok going to give me
20 an exhibit list that was due on Monday?
21 MR. MICHIE: It's me, your Honor.
22 MR. MIGLIORI: The list is ready.
23 The only thing remaining were the documents for
24 today's testimony and those will be inserted.
25 THE COURT: Otherwise, we have
Mehlman-Cross/Rosenberg 2499
1 agreement on the documents. Just ticking my little
2 checklist off.
3 Let me see lead counsel in chambers
4 and I'll need the reporter. Otherwise, we'll stand
5 in recess until 1:35.
6 (The following takes place in
7 chambers.)
8 THE COURT: All right. The matter
9 before the Court was the plaintiff's request
10 regarding objections to the admission of Constance
11 Mehlman's psychotherapy sessions. The content of
12 the argument came during the week of Thursday and
13 Friday of the 16th. That would be the 19th and the
14 20th.
15 I was alerted by counsels earlier
16 that there may be an issue on the psychiatric
17 records, and counsel, again to their credit, have
18 worked out quite a number of issues, but I was told
19 by midweek that this was not going to be an issue
20 that was going to be worked out. Therefore, I
21 invited counsels to make oral presentations which
22 they did after the trial on Thursday, the 19th.
23 After hearing the arguments, I
24 specifically asked counsel if they would give me a
25 very short -- and each side did -- brief on what
Mehlman-Cross/Rosenberg 2500
1 their contentions were, because it became unclear to
2 me at the presentation on Thursday as to which
3 specific sections counsels wanted to use, and which
4 they were not going to use. So that was one of the
5 issues. And they both assured me that there were

6 areas that they had mutual agreement on of areas
7 they would not go into, and which areas they would
8 go into.

9 So I received briefs on Friday and
10 also had short oral argument, about 2:30, three
11 o'clock, at the request of Mr. Rosenberg, and we
12 had, I believe, Mr. Migliori was here and -- were
13 you on the conference, Mr. Patrick?

14 MR. PATRICK: No, your Honor. I think
15 it was Mr. Klok.

16 THE COURT: Mr. Klok was on telephone
17 conference.

18 MR. ROSENBERG: And Mr. Clark.

19 THE COURT: And Mr. Clark was here
20 for the defense. So at that time I entertained a
21 second oral argument. These documents which have
22 been marked Bates Stamp Nos. 272361-0007 through
23 00043 were not produced to plaintiff's counsel until
24 March 8th, 2000, which came almost two months after
25 the January 15th, 2001, deadline of the previous
Mehlman-Cross/Rosenberg 2501
1 case management order I had issued, this being less
2 than one month prior to the trial date.

3 I'm ruling and I have to rule on what
4 I have right now.

5 The problem was not one that I
6 thought, while I'm not happy to not have records, I
7 taught it was not an impediment for me to consider.
8 My position is that the trial is a search for the
9 truth, and absent gross prejudice or such undue
10 prejudice that the Court would not examine records
11 without any prior knowledge, I would be glad to read
12 them, and I did in fact accept them.

13 These documents, according to the
14 plaintiff, should be excluded in their entirety.
15 Defense had in oral argument to me on Thursday told
16 me that they wished to introduce, at my request,
17 what was the purpose they wished to introduce them
18 for. I was given several answers. First, because
19 Mr. Patrick had made comments during this opening
20 about the family harmony throughout the marriage,
21 that wished to be corrected, for some statements
22 were made by Mrs. Mehlman to her psychotherapist.

23 Second, because the daughter Allison
24 had taken the stand. There were divergent
25 statements made by Mrs. Mehlman to her
Mehlman-Cross/Rosenberg 2502
1 psychotherapist regarding interactions between
2 herself and some of the daughters throughout their
3 lives which were told by Mrs. Mehlman to her
4 psychotherapist, and also about the nature of
5 Mrs. Mehlman's relationship to Mr. Mehlman regarding
6 their marital interaction.

7 All these psychiatric records, of
8 which there were two packets, included problems,
9 which according to the plaintiff were irrelevant and
10 inadmissible under several aspects of violation of
11 Rules of Evidence, and according to the defense were
12 material and pertinent on what I think ultimately
13 became the gravamen of their purpose, which is that
14 of impeachment. So while I, of course, entertained
15 all issues, it appears that that seems to be the
16 gravamen of the defense's attempt to use these

17 documents.
18 Now, plaintiff had made oral argument
19 on Thursday and cited the seminal case of United
20 States versus Lopez, 611 Fed. 2d. 44 which is a
21 Fourth Circuit case, 1979. At that time the Court
22 went into the history of psychiatric records being
23 an area of great personal privacy. And in fact, if
24 one looks at the legal scholar analysis throughout
25 law review articles, it appeared that constitutional
Mehlman-Cross/Rosenberg 2503

1 issues do permeate in the issue of privacy and the
2 issue of free speech that is involved. So it
3 becomes somewhat of a significant issue, both in
4 State and Federal practice. The Lopez case is cited
5 in 22 Federal Practice and Procedure, Section 280.

6 Defense indicated that they had no
7 intention of damaging Mr. Mehlman's reputation. It
8 was not to have any personal attacks, nor to be
9 argumentative, nor to have any undue invasion of
10 privacy or vehemence towards the witness. However,
11 the witness, both the spouse and the administrator
12 of the estate, and the parties' familial harmony was
13 in fact open for discussion.

14 The defendants do not have a
15 psychiatric experts. They are not intending to use
16 it for purposes of a psychiatric opinion, but rather
17 intend to use it again, in what I believe to
18 perceive in between the line as impeachment
19 purposes.

20 Plaintiff's object basically on three
21 grounds. Number one, 802, the hearsay evidence rule
22 as hearsay within 803(c)(4), and also 403 balancing
23 of probative versus prejudicial, and also on
24 privilege.

25 Now, there appear to be eight general
Mehlman-Cross/Rosenberg 2504
1 categories which were suggested in the briefs that
2 were submitted to me on the 20th encompassing these
3 two packages of expert reports. Number one
4 pertained to the manner of Mrs. Mehlman's prior
5 marriage to Mr. Mailman. That would be
6 Mrs. Mehlman's first marriage and that which ensued
7 in that marriage.

8 There are occasional references in
9 the packets to, quote, suicidal ideations. There
10 are also references to a general discussion of,
11 quote, manipulation and victimization involving
12 family members, as well as those outside of the
13 family. There were also references particularly to
14 physical and verbal abuse with family members. The
15 verbal abuse or emotional abuse is characterized in
16 some of the notes, some of which -- many of which
17 are totally illegible, which is not uncommon in
18 medical and/or psychiatric records, and I did the
19 best I could do glean through them to see what the
20 parties were asking for. The emotional abuse being
21 purportedly observations of Mrs. Mehlman. The
22 physical abuse were physical altercations between
23 the plaintiff, Mrs. Mehlman and one or maybe two of
24 the daughters.

25 That were also references with no DSM
Mehlman-Cross/Rosenberg 2505
1 diagnosis or confirmation about gambling and alcohol

2 problems. There were also references to
3 characterizations of the marriage relationship, what
4 I'm terming the familial harmony between Mr. and
5 Mrs. Mehlman and passing references to contemplation
6 of divorce. That were also references having to do
7 with the relationship of Mrs. Mehlman and other
8 family members other than Mrs. Mehlman and her
9 immediate family members, that being the husband and
10 the daughters, and even to the extent of
11 grandchildren. There were also other references
12 about the daughters' spouses, their families and
13 Mrs. Mehlman's brother.

14 In the response to the opposition,
15 there appeared to be limiting of many of these,
16 although not totally, of these by the defense which
17 would not involve the son-in-laws, the in-laws, the
18 grandchildren, although it did involve what were
19 allegedly some physical altercations, alleged
20 physical altercations between Mrs. Mehlman and
21 daughters, and obviously, the familial harmony or
22 non-harmony between Mr. Mehlman and Mrs. Mehlman.

23 On oral argument on Thursday, I
24 invited counsel if they had any New Jersey cases to
25 cite to me on this issue. Neither had. In a very,
Mehlman-Cross/Rosenberg 2506

1 very cursory examination of the annotations within
2 the evidence book, I found the case of Tramutola
3 versus Bartone, 63 New Jersey 9, which later was
4 quoted by both counsel in their briefs the next day.

5 Coincidentally, I think Tramutola is
6 the case that was argued by Mr. Brown from the firm
7 of Wilentz, Goldman and Spitzer while in Perth Amboy
8 quite a number of years ago that went up to the
9 Supreme Court.

10 The other case that was quoted to me
11 was also, I believe, a medical negligence case also
12 New Jersey case, both of which had to do with the
13 403 -- I'm sorry. The 803(c)(f) issues.

14 So we have concluded the -- we are at
15 the point now where we have concluded the
16 plaintiff's direct of Dr. Mehlman, and we are
17 proceeding on the cross-examination, and have in
18 fact completed 15 minutes of Dr. Mehlman's
19 cross-examination. I have been placed on notice by
20 Mr. Rosenberg that he does intend to refer to --
21 depending on the ruling, several passages within the
22 psychiatric reports that were now marked with Bates
23 stamp numbers. And again, I'm going to discern that
24 I believe these are for impeachment purposes, which
25 I think was really the gravamen of defense's
Mehlman-Cross/Rosenberg 2507

1 position. I'm going to supplement the record that
2 Mr. Rosenberg is nodding his head yes, and I'll take
3 that as an affirmative.

4 MR. ROSENBERG: Yes.

5 THE COURT: I'll tell you what I
6 found troubling. I'm not worried about the late
7 obtaining of the records. I really believe that in
8 the interest of justice it outweighs procedural
9 issues because we are in search of the truth.
10 However, both sides did not cite what I believe to
11 be the controlling case in this area, and that's the
12 case of Kinsella vs. Kinsella. This is a 1997

13 Supreme Court decision by Justice Stein. The cite
14 is 150 N.J. 276, and it's 696 Atlantic 2d. 556, and
15 this in fact is a divorce case. However, there are
16 three issues in this divorce case. Number one, the
17 issue of extreme cruelty; number two, the issue of
18 custody; but number three, and what is in fact
19 material here, is the issue of the marital tort.

20 This history of the Kinsellas is
21 nothing short of classical matrimonial tragedy in
22 terms of the wife's and husband's position. In this
23 case John Kinsella had sued Mary Kinsella for
24 extreme cruelty, and the wife counterclaimed for
25 extreme cruelty and also sought tort damages for
Mehlman-Cross/Rosenberg 2508
physical and mental abuse from her husband.

2 The reason this case is significant,
3 number one, is because it's from our highest court;
4 but number two, it goes through what is the most
5 encompassing description of the psychotherapist-
6 patient privilege and the circumstances on which
7 such records are to be utilized by the courts.

8 At the time of oral argument on
9 Thursday, counsel for the plaintiffs said, "Judge,
10 this should not be analogized as to medical records,
11 and in fact, they should be distinguished from
12 medical records." To an extent that's right, to an
13 extent it's not right. It is right in the sense
14 that -- it is not right in the sense that these
15 records do not have any similarity to the privilege
16 of physician-patient, because in fact the common law
17 on this has eroded to be replaced, and New Jersey is
18 one of a number of states that have replaced
19 statutory control over this, and in fact has made it
20 akin to the attorney-client privilege. That makes a
21 distinction on how the cases are to be interpreted.

22 The psychotherapist-patient privilege
23 protects individuals from public revelation of
24 innermost thoughts and feelings that were never
25 meant to be heard beyond the calls of the
Mehlman-Cross/Rosenberg 2509

1 therapist's office. The privilege makes possible
2 open and productive relationships between therapists
3 and patients that by public good accomplished, when
4 individuals are able to seek effective mental health
5 counseling and treatment. And again, controlled by
6 NJSA 2A:84A, also the Rules of Evidence. This
7 parallels the similarities in 505, 506 in the Rules
8 of Evidence.

9 There is, in fact, a privilege
10 modelled, again, on the attorney-client privilege
11 which is different from other states, where in fact
12 they model it very, very similar to the physician-
13 patient privilege.

14 Now, it is clear from Justice Stein's
15 decision that this privilege is in fact the
16 examination here is more circumspect than that of
17 the physician-patient privilege. Now, there are
18 exceptions clearly. Classically, the crime or fraud
19 exception, also the best interest of the child
20 exception, and the issue of the definition that
21 becomes important to us of what is in issue.

22 Now, keynote 14 within this
23 opinion -- let me go back first.

24 Starting at 294, 150 NJ 276, 294, the
25 Court starts its discussion about the privilege
Mehlman-Cross/Rosenberg 2510
1 afforded the psychotherapist serving the public
2 interest. My discussion with counsels on Thursday,
3 and I am convinced this only has come up while I was
4 in the family court. It has not come up in civil
5 cases that I have dealt with except in a brief
6 instance in the breast implant case, about the
7 psychotherapist and patient treatment. However, I
8 did note as recently as the Caravaggio decision by
9 Justice Long recently on the statute of limitations,
10 she does bring up a concern that the Court should,
11 in fact, be very mindful of public policy and the
12 balancing of public policy with the rule of law.
13 And in that case clearly the public policy was to
14 make sure that the public had confidence to go to
15 their doctors without having to worry about
16 subsequent lawsuits or statutory problems. Public
17 health, good health was the priority here. This is
18 again paralleled by Justice Stein's earlier decision
19 in Kinsella.

20 The Court goes through a variety of
21 noted law review articles, as well as treatises in
22 the psychiatric field. The court goes through the
23 history of the psychologist privilege delineated in
24 505 of the Rules of Evidence, incorporating the
25 relevant sections of the practicing section of the
Mehlman-Cross/Rosenberg 2511
1 Licensing Act of 1976, and its amendment in 1981
2 which also extends to couples, families and groups
3 within the privilege. Again, I cite this only
4 because I want to give you the background, not that
5 we're specifically dealing with family counseling
6 issue, but to show you how thoroughly broad Justice
7 Stein's opinion is.

8 Again, New Jersey is among several
9 states whose privilege is modelled after the
10 psychotherapist-patient privilege, and again, bases
11 it on the attorney-client privilege. In New Jersey,
12 the statutory physician-patient privilege is
13 somewhat more circumscribed than the psychologist-
14 patient privilege, again citing a series of cases
15 under New Jersey Rules of Evidence 506.

16 Just as the attorney-client privilege
17 is not absolute, neither is this. However, the
18 Court sets up following the attorney-client
19 privilege criteria that must be provided first by
20 the party wishing to pierce the privilege, and that
21 is In Re Kozlov, 99 N.J. 232 at 243, 244, a 1979
22 case, involving three foundations must be
23 established by the party seeking to pierce the
24 privilege. One, there must be a legitimate need for
25 the evidence; two, the evidence must be related and
Mehlman-Cross/Rosenberg 2512
1 material to the issue before the Court; and three,
2 by a fair preponderance of the evidence, the party
3 must show that the information cannot be secured
4 from any less intrusive source.

5 I guess taking them in reverse order,
6 I am a little disturbed because I have not heard
7 anything other than the fact that these records --
8 the purpose of the impeachment then is to come from

9 these records. I haven't had demonstrated to me
10 under Koslov any attempt to find out whether
11 Mrs. Mehlman had any problems with any family
12 members or neighbors or other persons other than
13 through these records.

14 There were allegations within the
15 records themselves, that is there has been problems
16 with neighbors or problems with other family
17 members. I know there's been extensive discovery
18 here, but none of that has been brought to my
19 attention.

20 To be relevant and material, I guess
21 that goes back to the issue of what is in issue.
22 The definition of what is in issue by a claim of in
23 this case extreme cruelty, is a function of
24 requisite elements to prove that of the cause of
25 action. Therefore, in issue must be related to the
Mehlman-Cross/Rosenberg 2513

1 elements of the cause of action. Here, we're not
2 using it to prove the elements of cause of action,
3 but we're here to use it as impeachment on what is
4 really going to be a damage issue rather than the
5 cause of action.

6 Now, arguably giving all favorable
7 inferences to try to understand what is the
8 motivation here, the issue of the increased risk --
9 although there's some question after yesterday's
10 testimony as to how clear that is -- to be
11 associated with stress or depression being a
12 function of the cause of action, again, has not been
13 made clear to me in terms of why the records should
14 be used for this.

15 Again, the in issue implicit waiver
16 analysis was developed in the Wolosoft case, and
17 that is expressly applied to the psychologist-
18 patient privilege by the Appellate Division in the
19 Arena case, 201 N.J. Super. 88, to hold that a
20 plaintiff had effected a limited waiver of privilege
21 by placing her emotional and mental state in issue
22 in a medical negligence case based in part on
23 psychological stress. Also the Rosgay case, Rosgay
24 vs. Cantor, 187 N.J. Super. 657, Law Division 1982,
25 holding that the plaintiff waived the psychologist-
Mehlman-Cross/Rosenberg 2514

1 patient privilege as well as the physician-patient
2 privilege by claiming damage related to mental
3 condition in a dental malpractice case.

4 The Court goes on to talk about a
5 discussion of the patient litigant exceptions and
6 those judicially created of the implicit in issue
7 waiver, and this brings me back to the discussions
8 of both parties in Tramutola vs. Bartone. Here the
9 Court held admission of statements of a patient
10 to -- as to her physical, history, symptoms, or
11 suspected cause of those symptoms given to her
12 doctor, a psychiatrist, before he gave an opinion as
13 to her present mental and emotional condition, the
14 Court held that the statements were not hearsay
15 because they were not offered to prove the truth of
16 her statements, but the only purpose of setting
17 forth matters of which the doctor opined -- the
18 doctor's opinion was based upon in opining.

19 Again Tramutola relates to the 403C

20 issue applying to the psychiatric records. However,
21 there must be a demonstration that the statements
22 may not be offered to prove the truth of the matter
23 asserted by only demonstrate the basis of the
24 expert's opinion. And also statements made for the
25 purposes of the psychological treatment are not
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1 considered on the same footing of the medical
2 records. So that's why they're a little different
3 than the medical records in and of themselves.

4 Here, if defense wishes to use these
5 as impeachment, number one, under hearsay they are
6 being used for the truth of the matter asserted, so
7 I've got a problem that there's no requisite
8 showings under privilege. And I have a problem that
9 they haven't shown me a reason for using them in
10 non-hearsay matters according to Tramutola. And
11 again, Tramutola being a case six years prior to
12 Justice Stein's decision is also concerned with the
13 public policy of people having discussions with
14 their therapists.

15 Also I'm concerned with the issue of
16 the fact that there is no psychologist -- I say
17 psychologist and I don't mean to say that. I mean
18 to say a psychiatrist on the defense's side to
19 comment on these entries. It would require a
20 cross-examination of paper, because it is unclear
21 what the discussion was, whether it was elicited
22 from the doctor, whether these were voluntary
23 admissions, whether this is a the psychiatrist's
24 interpretation, some of which I honestly can't read.

25 I think the introduction of them is
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1 improper then under three areas. Number one, the
2 privilege; number two, the improper hearsay, for
3 802; and number three, in weighing the 403 issue, I
4 have to weigh the public policy on what I'm doing
5 here. It seems to me that were the psychiatrist's
6 reports not here, there would have been other ways
7 for the defendants to have proven or to have shown
8 disputes within the marital area.

9 I also find it a little troubling
10 that in cross-examination of Allison, Allison's
11 perceptions are not on the equal footing of that of
12 both adults. This was a child's perception of her
13 parents' involvement. Absent abuse, I don't know
14 how you're going to impeach those statements now
15 through Dr. Mehlman, even if I were to allow the
16 records in.

17 And I don't know what is going to be
18 brought out on the second daughter, but I think part
19 of the problem, again, is going to be her perception
20 versus what may have actually happened in this
21 marriage, or what's recorded here by the doctor.
22 The issue of whether or not there was depression or
23 whether or not there were suicidal ideations is a
24 diagnosis that no one can explain, because we don't
25 have the doctor here, and we don't have the proper
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1 foundation to analyze that, nor is he qualified to
2 speculate on it in this area.

3 That's what I have before me and
4 that's what I think the law is.

5 MR. ROSENBERG: May I -- I understand
6 your Honor's ruling, but may I both respond and ask
7 some questions for guidance of my cross-examination?
8 THE COURT: Right.
9 MR. ROSENBERG: In terms of the issue
10 that your Honor raised under Koslov as to whether or
11 not this information could be proved through
12 anything else, there was an extensive deposition of
13 Dr. Mehlman and interrogatories, all of which led to
14 one fact which was he is the only person who has any
15 knowledge -- only one.
16 THE COURT: Except that the
17 discussions in the records accused Mrs. Mehlman of
18 not -- you asked me, and I'm responding to your
19 observation. The records made references to both
20 the daughters and people outside of the family that
21 she apparently was having difficulty with.
22 I know that I only gave people one
23 day in terms of a turnaround, but that's how it was
24 brought to me. And I know it's difficult. We would
25 all like to have time to sit and write law review
Mehlman-Cross/Rosenberg 2518
1 articles on this, but I based it on what I had on
2 the arguments and what I had on the literal two-day
3 turnaround.
4 MR. ROSENBERG: And in that regard we
5 did not intend and do not intend to bring in
6 anything concerning neighbors. Or in fact, with one
7 exception of Mara, the children our intention was to
8 use this in light, not only of Mr. Patrick's opening
9 and Allison's testimony, but in light of the
10 testimony today of pictures being worth a thousand
11 words where they have demonstrated to the jury that
12 this was a happy marriage, and this is not only the
13 best evidence, it is the only evidence other than
14 what comes out of Dr. Mehlman's mouth. And I don't
15 understand how I can impeach him without the
16 statements, not the diagnosis by the psychiatrist,
17 not the psychiatrist's impression, but
18 Mrs. Mehlman's statements.
19 THE COURT: Again, part of the
20 problem is, I have cold records that I have no
21 doctor interpreting. I don't know under what
22 conditions they were saying. I could have a
23 conversation with you, and we could have two
24 different set of notes. That doesn't mean that we
25 didn't have the conversation. It may mean that we
Mehlman-Cross/Rosenberg 2519
1 have gleaned things on different aspects. Because
2 someone says my husband was abusive, that doesn't
3 rise to the legal or the medical term of abuse.
4 Now, because someone says I'm addicted, doesn't rise
5 to the legal or medical term of abuse. I have no
6 way of understanding that, because I have no doctor
7 to tell me what these medical records say. I'm
8 shooting in the dark here as to what transpired
9 between the doctor and the patient. There are
10 clearly statements by Mrs. Mehlman -- strike that.
11 Let me say this. It's not that there
12 were statement. There were sentences in the records
13 that indicated that there were problems between the
14 Mehlmans. Whether that comes in the form of her
15 admission or the doctor's interpretation of this, I

16 just don't know.
17 MR. ROSENBERG: In that regard, one
18 of the reasons, the main reason that there is not a
19 doctor here, because in fact, there have been --
20 there was never an objection raised as to our
21 getting these records, and therefore, there was a
22 waiver of the records. There was no problem with
23 authentication, so it was only a question of whether
24 or not these records in and of themselves contained
25 or did not contain inadmissible hearsay.

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1 THE COURT: I would appreciate that
2 except the issue of the privilege was brought up at
3 oral argument on Thursday, and so before I went into
4 the more sophisticated arguments of the hearsay, the
5 trustworthiness, the -- I have a further issue down
6 here, the 403 issue. I started with the privilege
7 issue. No one told me. It was not presented to me,
8 unless I'm completely wrong. Nobody told me that
9 the privilege had been waived. In fact, in oral
10 argument, they -- the issue was -- in fact, I think
11 it was, and I didn't consider this last argument --
12 I considered it. I didn't give any weight to it.
13 The similarity of the fact team memo. You know this
14 is isn't a score card. I let this in because I
15 didn't let that in. That's not how I operate.
16 Counsel has brought up and said to me, "Well, Judge,
17 in fact, counsel for the plaintiff -- I forget who
18 argued on Thursday.

19 MR. ROSENBERG: I think Mr. Haefele
20 did.

21 MR. PATRICK: Mr. Haefele.

22 THE COURT: Had referred to the issue
23 on the privilege, and then went into the Lopez
24 concern. So when I did my analysis I started with
25 the privilege, and then worked my way up the chain
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1 on the analysis. Now, if you're telling me here
2 that that was an incorrect statement, and that there
3 was an agreement that there was a waiver.

4 MR. ROSENBERG: I'm not saying there
5 was agreement. I'm saying there was no objection to
6 this discovery of these records, and we used them at
7 the deposition of Dr. Mehlman without objection.

8 THE COURT: I'm recounting for you
9 what I was told. If that's what you're telling me
10 now, that there was no issue of privilege, I need to
11 know that now, because that's not what I was told on
12 Thursday.

13 MR. PATRICK: Well, your Honor, my
14 understanding was that there was a release that was
15 signed by Dr. Mehlman that allowed them to obtain
16 the records. Now, whether or not that is such that
17 that vitiates a privilege, I don't believe so. I
18 believe the reasons underlying the privilege is that
19 Mr. Haefele stated in oral argument still remain.
20 The fact that they have these documents in their
21 possession doesn't necessarily imply that there was
22 a disclosure. In fact, similar arguments have been
23 made by the defendants regarding documents that have
24 been open and available to the -- to the various
25 plaintiffs, but to which they still maintain a
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1 privilege. So I think that the reasons for the
2 privilege are still there, even though the documents
3 obviously are in their possession.

4 THE COURT: I'm flipping through
5 Kinsella, because there is discussion about not even
6 submitting these to an I know camera inspection.
7 It's a lot more tighter than the physician-patient
8 privilege. I'm sorry. I'm looking for it. I'm
9 sorry. It's not at my fingertips, because I didn't
10 think that the in camera issue was going to come up,
11 but I just use it for illustrative purposes, that in
12 fact the Court is to be very careful about how to
13 receive these and what is to be taken into account.

14 And I apologize, it's quite a lengthy
15 opinion, and I'm -- I probably have not highlighted
16 it, which is -- my apologies on that. However, I
17 think the point is that even to get them to an in
18 camera inspection, there has to be a showing of the
19 necessity to have it.

20 I need to be clear that what you're
21 telling me, Mr. Patrick, is you have placed the
22 defendants on notice prior to coming in on the 19th
23 that you had not waived the privilege because that
24 is what I was led to believe. If that's not true,
25 I'll reconsider my opinion. Although I think
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1 there's some hearsay issues and some 403 issues that
2 I'm troubled by.

3 MR. PATRICK: Your Honor, we did, and
4 I want the record to be completely clear because I
5 don't want to mislead anybody. We did sign a
6 general release that allowed them to obtain records,
7 all medical records including these records. But
8 the fact, our position is the fact that we signed
9 this does not vitiate the privilege, and that the
10 reason for the privilege still remains. So the
11 answer would be yes, we would stand on the
12 privilege.

13 THE COURT: Did you let them -- were
14 you clear on the non-waiver of the privilege prior
15 to the 19th.

16 MR. PATRICK: I would only have to
17 say I would stand on what Mr. Haeefele had to say in
18 open court, but I believe what he said was that the
19 reasons for the privilege still remain. I mean
20 simply because we allowed them because New Jersey
21 has been pointed out is an open discovery state,
22 allowed them to obtain records.

23 THE COURT: It is. You can get a lot
24 on discover, but everything that you get in
25 discovery is not admissible. I want to be clear
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1 because when I took my notes, those were the issues
2 I had, privilege, hearsay and the 403 balance, and
3 that's how I did my research.

4 So maybe I'm reading more into it
5 than I think, but I have the sense in looking at
6 your two colleagues that they were unaware that this
7 privilege was a substantive issue. Am I overreading
8 that?

9 MR. BIERSTEKER: I don't believe you
10 are, your Honor. I mean, I would only note that
11 if -- and I don't mean to suggest in any way a score

12 card, but I think there is an analogy here, and that
13 is if the production of the Jones Day work product
14 to Congress under subpoena and a failure to exhaust
15 all possible means to prevent that production --

16 THE COURT: I know you still want to
17 argue that point since I wrote the opinion in '98,
18 and I've clearly put why that privilege did not
19 stand, okay? That it's not analogous.

20 MR. BIERSTEKER: Okay.

21 THE COURT: The issue here is you may
22 have continued to think it's privileged, but I've
23 already ruled on it.

24 MR. BIERSTEKER: I'm not reopening
25 the issue. I'm saying if that constitutes a waiver,
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1 producing it to Congress, then it seems to me that
2 signing a voluntary release does the same thing.

3 THE COURT: The law in New Jersey is
4 very clear. We have open discovery. That which you
5 get in -- you have to produce things in discovery
6 pretrial, whether it's admissible into evidence or
7 not, and the two do not equate.

8 MR. ROSENBERG: And I'll put this on
9 the record and we can double-check it by a quick
10 look at the deposition of Dr. Mehlman. Mr. Patrick,
11 as he stated -- we were given a general release that
12 was sent with the list that was provided to us by
13 them, which they knew included the psychiatrist. We
14 tried months and months to get these. In fact, most
15 of them were given more than a month ago. We only
16 got the tail end a month and a half ago. We got the
17 tail end prior to May 12th, 2000, when we deposed
18 Mr. Mehlman.

19 THE COURT: I have to read these
20 letters to show you where I got my facts.

21 MR. ROSENBERG: In July of 2000,
22 Mr. Patrick was there and I was there, and
23 Mr. Mehlman was -- Dr. Mehlman was deposed for two
24 days. His second day was almost entirely on these
25 documents. I do not recall any objection to the use
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1 of the documents on the record.

2 I do recall one objection to the form
3 of the question that I made in the deposition, but
4 not to the documents itself or the use of the
5 documents. And obviously we can check that, but it
6 should be right in the transcript. And there was no
7 motion in limine on this issue. And in light of all
8 that, that is -- we had a situation where we had
9 admissible documents that were authenticated. And
10 we did not name a psychiatrist as a witness, and we
11 relied on that, and I think we are being prejudiced
12 to that very severe effect.

13 MR. PATRICK: Let me say this. And I
14 think Mr. Rosenberg is absolutely correct as to
15 whether or not it's a waiver, your Honor. I did not
16 specifically go up and tell Mr. Rosenberg or
17 Mr. Biersteker that we waive -- on behalf of the
18 plaintiff we waive the privilege.

19 These documents were produced.
20 Dr. Mehlman was cross-examined on them in his
21 deposition, but with the understanding that the
22 objections were being reserved until the time of

23 trial in substantive areas.
24 MR. ROSENBERG: It's a general
25 objection, not a specific.
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1 MR. PATRICK: Right. And that we did
2 bring it to their attention and to the Court's
3 attention, our objection to the use of these
4 documents for the cross-examination of Dr. Mehlman.
5 But to be perfectly frank, I think the record would
6 be silent. I did not affirmatively waive the
7 privilege either in writing or orally. On the other
8 hand, what he states is correct in terms of our
9 actions with the records.

10 THE COURT: It puts me in a difficult
11 position, because I -- I appreciate what you're
12 saying. You didn't take a position one way or the
13 other. But if you're claiming the privilege, you
14 have to let them know before trial, because when
15 counsel comes to me and talks to me about privilege,
16 hearsay and 403 balance, I've got to know that
17 that's genuine or not, and that's how I did my
18 analysis.

19 MR. PATRICK: And I think what
20 Mr. Haefele was stating was that the reasons
21 underlying the privilege still remain. Simply
22 because there was a -- there may have been actions
23 that may constitute some type of waiver, that did
24 not obviate the very strong fundamental reasons that
25 give rise to the privilege.
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1 THE COURT: Let me do this. It is
2 five after one now, and I know we're going to start
3 in half an hour. What time is your witness coming
4 in tomorrow?

5 MR. BIERSTEKER: He'll be here this
6 evening, so we'll be ready to go first thing,
7 assuming we get through Hope, which I hope we will.

8 MR. PATRICK: You're telling us --
9 Dr. Townsend is also available on Thursday?

10 MR. BIERSTEKER: That's correct.

11 MR. PATRICK: So we don't have the
12 issue of down time that we thought we would have.

13 MR. BIERSTEKER: We do Monday. It
14 just shifted the day.

15 THE COURT: Get those depositions
16 ready. In light of the discussion here, I'm
17 uncomfortable about the privilege issue, because
18 that which was presented to me on Thursday seems to
19 be a little different from what you're telling me
20 now. My clear impression on Thursday was what we --
21 while we produced the records, we still claimed the
22 privilege. There was nothing in opposition on the
23 issue of privilege, and you know, I clearly remember
24 my notes going in that order.

25 If I turn to the remaining issues
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1 which are the 802, having to do with the records, I
2 still have Tramutola which tells me that her telling
3 the psychiatrist about her symptoms, about her
4 suspected cause of the symptoms, before he gave an
5 opinion, in this case the opinion is not going to be
6 admissible. The Court rules it as an admissible
7 hearsay but, admits it only because they're not

8 offering to prove the truth of her statements, but
9 only as to the purpose in setting forth the matters
10 to which the doctor's opinion is based.

11 If you're going to use it for
12 impeachment, aren't you really using it to prove --
13 aren't you really just using it to prove the truth
14 of the matter?

15 MR. ROSENBERG: Well, I'm using it to
16 prove that what he is saying is untrue. I'm using
17 it to impeach his credibility and for the purpose of
18 saying that what he's saying is untrue.

19 MR. BIERSTEKER: Or put another way,
20 that Mrs. Mehlman's perception of marital bliss was
21 different than his.

22 MR. ROSENBERG: Which may not be
23 hearsay.

24 MR. PATRICK: Your Honor, we've been
25 prepared to stipulate to the fact that Mrs. Mehlman
Mehlman-Cross/Rosenberg 2530
1 reported stress and was diagnosed with depression,
2 and I think that offers the defendants the ability
3 to have their experts, if they wish, to opine that
4 stress somehow increased her risk for cancer. But I
5 don't think these records themselves should be used
6 to cross-examine Dr. Mehlman about the statements of
7 his wife given to a psychiatrist, not only as
8 hearsay, because it is being used to prove the truth
9 of the matter, but is highly prejudicial.

10 MR. ROSENBERG: I'm not familiar with
11 the Tramutola case. Was that a party whose
12 statements to the psychiatrist, it was put in issue?

13 THE COURT: I have it. I'm sure it
14 was in your brief. Let me suggest this. Let's break
15 for 20 minutes, all right? Talk to your respective
16 teams. I'm sure each of your sides has the case.
17 If I have to delay in bringing the jury back, I
18 will, but we will reconvene again, take a look at
19 the case law. I just tell you that, I really -- I
20 spent a lot of time reading this case because that
21 was the issue brought up to me. I'll tell you right
22 now so there's no misunderstanding on 403 or the
23 privilege. I am not letting any admissions in,
24 because I'm not convinced yet they are admissions by
25 the wife as to any interaction with the children.
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1 MR. ROSENBERG: That's fine, your
2 Honor. Again, our primary purpose is dealing
3 with -- I jotted down about a dozen things that
4 happened in court, the pictures, she was supportive,
5 did the relationship change implied that the
6 relationship was a certain way, what was it like the
7 last seven years, primarily very good times, she
8 enjoyed the trips overseas.

9 THE COURT: It was not what was
10 stated. It was the omissions of the time line that
11 I think you were concerned with.

12 MR. ROSENBERG: That's correct.

13 THE COURT: I noted them also as we
14 went along.

15 MR. ROSENBERG: And the only way for
16 us to get the full picture before this jury is to
17 allow me to cross-examine him. And by the way, some
18 of the stuff that I would assume I would be able to

19 do, whether or not I had the records -- did you
20 verbally abuse her? He admitted some of the stuff.
21 MR. BIERSTEKER: In the deposition.
22 THE COURT: The deposition is clear.
23 MR. ROSENBERG: And I'm allowed to do
24 that, but it's only a small part of what was a very
25 large picture that went through 1997 when he said
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1 everything was blissful.
2 THE COURT: I don't have -- whatever
3 is in this deposition, as to his admission of what
4 happened, that you have. That's open. What I'm
5 uncomfortable with, I don't know what these records
6 actually represent. Are they his statements? Are
7 they the doctor's statements? It's almost a
8 trustworthy issue. How am I taking these records?
9 Am I taking these records because they are
10 admissions made by her? Are they notations by the
11 doctor? I have no way of knowing.
12 MR. ROSENBERG: How is it different
13 other than the public policy issues, which I know
14 are very important, than any other letter that says
15 Phillip Morris said XYZ or Reynolds said XYZ.
16 THE COURT: Because these are
17 statutory constructions, and they have to be
18 construed narrowly in light of public policy for
19 which they are based. And although this State
20 abolished priest-penitent privilege, but this is
21 important privilege. This a high public policy, and
22 it's so much so that the Court goes ahead and says,
23 it is in fact stricter than the patient-physician
24 privilege and akin to the attorney-client
25 privilege, and makes the admission even in these
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1 circumstances, in Kinsella very, very narrow.
2 Because even the Appellate Division had carved out
3 certain portions, but the Court goes back and
4 re-examined those. So I think it is different.
5 I'm still very uncomfortable. If you
6 look at some of these records in and of themselves,
7 and clearly, so we make no mistake about it, and I
8 know this was Mr. Clark's representation, the first
9 marriage, her personal family history, that is just
10 not coming in. That's clearly prejudicial. On 9
11 regarding Radcliff, we then regard the issue of
12 being victimized by her daughter and also by her
13 neighbors and worked a great deal on her part of
14 feeling powerless and unable to influence what was
15 happening.
16 Under the word "victimized" by her
17 daughter, is that her word? His word? It makes a
18 great difference as to who is saying it. And I
19 don't want to attach a medical significance to it,
20 but if you use it for straight impeachment, and you
21 say, "Well, you understand your wife went to a
22 psychiatrist, and you know in the session in 1989,
23 did you know she said she felt victimized?" That's
24 a whole other issue. And if you look on -- I don't
25 know what this doctor's background is. I don't know
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1 where he's coming from on this.
2 MR. ROSENBERG: May I give a more
3 concrete example how I would use it and I would

4 probably need a little time to massage my cross.
5 For example, there are references to his threatening
6 her with divorce, or she threatening him with
7 divorce. It's a fair question for me to ask him, in
8 or about XYZ date, you threatened her with divorce,
9 is it fair to say.

10 THE COURT: That's the problem. Is
11 that a direct quote?

12 MR. ROSENBERG: Is it any more direct
13 than any other statement.

14 THE COURT: Yes, because it's given
15 to somebody. It's not a declaratory statement that
16 you can publish to the world. I don't know what
17 context they were using it that day, and honestly,
18 neither do you.

19 Assuming these are 45 minute
20 sessions, he's got four lines per session. It's
21 disturbing. I've got no one here to lay any kind of
22 foundation for this. I'm looking at 4/4/96. Assume
23 you can even read this word, I think it says,
24 "Depressed, this is one of the aspects with all
25 three daughters." One is -- looks like surgeon.

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1 I'm sure that's not the word. And then something,
2 "I feel in great distress." I feel in great
3 distress, is that what she said to him? "I feel in
4 great distress." Or does she say, "I'm upset
5 today," and he translates it "I'm in great
6 distress."

7 There are many medical records and
8 you well know, and let's analogize it into something
9 that we're comfortable with. We're in the emergency
10 room and it's in quotes, and patient says, "I
11 blacked out the minute I got hit." And you'll see
12 that in quotation marks. Here I don't have that.
13 This is just a running notes. And I'm so
14 uncomfortable with this, because I have no one here
15 to tell me what this means. This is like blindly
16 taking a hospital record and saying, "Well, this is
17 what you told the doctor, isn't it?" I mean it's
18 not under impressions. It's not under history.
19 This is just running notations. Is that what she
20 said, "I'm in great distress today."

21 MR. ROSENBERG: That's why I was
22 giving the example of more concrete statements.

23 MR. PATRICK: Your Honor, one of the
24 problems we have with this is that the records also
25 state, and I know this would be considered

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1 prejudicial even by the defendants, but it may be
2 something --

3 MR. ROSENBERG: It must be really
4 bad.

5 MR. PATRICK: Well, she was sexually
6 molested by her brother.

7 MR. ROSENBERG: I was never
8 intending --

9 THE COURT: They were very clear.

10 MR. PATRICK: I know they wouldn't,
11 but it may give rise to some of the ideations that
12 she might have in terms of Myron in terms of his
13 abuse, real or not, and it may not be real.

14 THE COURT: Well, for example, I'm

15 reading at 27236.00020. This is under Section 6
16 called Comments at the level of -- I can't even read
17 the photocopy -- of functioning with clinical
18 symptoms, it says, "Patient struggles with continued
19 depression and anxiety in face of dysfunctional
20 marriage." And these are highlighted portions. And
21 then the bottom part says, "Husband is" something
22 "threatening divorce."

23 MR. BIERSTEKER: I think the word is
24 "now" threatening.

25 THE COURT: "He's is now threatening
Mehlman-Cross/Rosenberg 2537

1 divorce." I don't know. Well, I mean is it a
2 dysfunctional marriage in the sense that it's a
3 diagnosis under DSM-IV? Is it dysfunctional because
4 there are cultural aspects of this marriage that
5 this doctor disagrees with, and therefore, calls it
6 dysfunctional? I don't know. And why should I
7 speculate? If I'm having questions about it, how I
8 can in fact have jury do that?

9 You know the statement that he is now
10 threatening divorce, is that perceived? Did he say
11 that? Was that her impression? I don't know. I'm
12 just uncomfortable because he have no witness to
13 discuss these records.

14 Traditionally, what usually happens
15 is, as you well know, there is someone called in,
16 you know, doctor, blah, blah, blah, how long is your
17 relationship, blah, blah, blah, was that the
18 patient's discussion, or was that your
19 interpretation? And then we know and then we can
20 cross-examine. Here we can't cross-examine this
21 piece of paper. I don't know what the basis of this
22 is.

23 I don't know. I'm trying not to read
24 too much into this. You also don't want -- let me
25 start by saying, it's my philosophy that broad
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1 latitude should be given on cross-examination, and I
2 have no problem with that. But when you start going
3 into -- and I'm putting the privilege issue aside.
4 Not that I haven't dismissed it, but I'm telling
5 you, I'm uncomfortable with the presentation, but
6 when you start saying things like this is a
7 dysfunctional marriage, well, is that his definition
8 as a psychiatrist? Is it his definition, because
9 you know, culturally he may want her to stay home
10 and she may want to go out and practice, and
11 therefore, it's not functional? I don't know. But
12 now we're going to go back and say, so your marriage
13 was dysfunctional, it wasn't functioning correctly.
14 Don't you see this notation where he says it's
15 dysfunctional?

16 MR. ROSENBERG: And I understand
17 that. That's why I'm trying to deal with more
18 concrete examples of factual statements, not
19 descriptive but factual statements that are set
20 forth in the records which I would --

21 THE COURT: Let's take this one,
22 "Husband is now threatening divorce." Well, did he
23 say, "I'm threatening you with a divorce?" Or is it
24 a comment as we hear so many times in the family
25 court? "I don't know what I'm doing here I should

1 just go get a divorce."

2 Now, does that rise to the same level
3 of saying, "I've consulted an attorney. I'm filing
4 the papers next month. You better decide what
5 you're going to do?" We hear these issues in family
6 court, you know, really quite often.

7 MR. ROSENBERG: Which is why, were I
8 to say, "Okay, Doctor. Isn't it true, in February
9 of 1996 you threatened your wife with divorce --

10 THE COURT: Why is it true?

11 MR. ROSENBERG: Let me walk it
12 through. And he either says, "Yes, I did," as he
13 may say because he did admit in the deposition.

14 THE COURT: The deposition I have no
15 problem. I'm telling you.

16 MR. ROSENBERG: Or he might say, "No,
17 that's not true." And then I would say are you
18 aware that your wife stated to a psychiatrist that
19 you were threatening with divorce.

20 THE COURT: No. You can't say that.
21 You can't make that conclusion because it's in the
22 record. That's exactly what I'm telling you.

23 Only because I'm telling you I've
24 heard these statements in family court for years.
25 The husband says, "I don't know what I'm doing here.

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1 I could have been by myself. I could have had my
2 dream car." I could have blah, blah, blah, and then
3 you know, he comes back and says, "I should just
4 filed for divorce." Does that have the same import
5 as I have the mental intention to tell you I'm going
6 to get divorced? It's unreliable. It's unreliable,
7 because you don't have -- if he had put in, "Patient
8 came to me on such and such, discussion revolved
9 around family life on such and such a day because of
10 an incident, quote, husband said I am filing for
11 divorce." Then I would say maybe you have some
12 indicia of something that you could introduce. But
13 to impeach him on this, I don't see it.

14 I think you're trying to read more in
15 there without someone laying the foundation on these
16 records than are possible. I'm uncomfortable with
17 that type of impeachment. If he said that in a
18 deposition, go right to it.

19 And now that we're on the one o'clock
20 hour, here is my one or two suggestions. You can --
21 if this is the central part of your cross-
22 examination, then I will consider taking him out of
23 turn to give you time. If you want to continue and
24 reserve a portion, I'll consider that too.

25 MR. ROSENBERG: What I think I would

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1 like to do is be given about 20 minutes to do some
2 re-tooling, and I would rather proceed and conclude
3 the cross-examination today.

4 THE COURT: It's up to you. I afford
5 you the alternate opportunity.

6 MR. ROSENBERG: And what I'm assuming
7 is that your Honor's ruling on this, or is your
8 Honor still considering -- before we went into
9 this -- the only reason I'm asking, before we went
10 into the discussion, your Honor said --

11 THE COURT: Here is my issue. The
12 issue is -- because to make or break, because we
13 have problems on the 0403 issues too. One is I
14 don't think it's a trustworthy document in that we
15 don't have any kind of basis for it. And I think
16 you're over-interpreting it to use it in an improper
17 impeachment, so it affects both the hearsay and the
18 403. So while I would like to clear up the record
19 on the privilege, it sounds like you didn't make an
20 affirmative claim on the privilege, and I think
21 privilege is one of those things you have to
22 affirmatively get up and wave a flag at.

23 MR. PATRICK: I understand.

24 THE COURT: And that was my
25 impression on Thursday was that the privilege had
Mehlman-Cross/Rosenberg 2542

1 not been waived. But based on the statement today,
2 I'm willing to make that conclusion you did not
3 meet -- did not meet what you should have done,
4 which was get up and affirmatively say, "We're
5 standing on the privilege. So I'm taking the
6 privilege issue away, and I'm looking at the
7 remaining one of the hearsay and the 403. And I'm
8 still not convinced that this document gets you to
9 where you want.

10 MR. ROSENBERG: I will obviously try
11 hard to not opening the door.

12 THE COURT: I know you will. I know
13 you're that good of a lawyer.

14 MR. ROSENBERG: For example, am I
15 permitted to ask him whether he was aware that his
16 wife was seeing a psychiatrist?

17 THE COURT: Absolutely.

18 MR. ROSENBERG: That's all I wanted
19 to know. And is he aware that his wife suffered
20 from stress and depression.

21 THE COURT: Now depression goes into
22 a clinical definition. Is there an admission -- is
23 there an admission by him anywhere in the
24 deposition, okay, that she had said I have been
25 diagnosed and he was aware of it?

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1 MR. ROSENBERG: No.

2 THE COURT: Then it goes to the basis
3 of his opinion, and again, I have no foundation. I
4 have nobody to tell me that.

5 MR. ROSENBERG: I am pretty sure that
6 there was statement by him that he was aware that
7 she was suffering from stress, but not that he
8 specifically said --

9 THE COURT: He said that on direct
10 examination.

11 MR. BIERSTEKER: Yes.

12 MR. ROSENBERG: Can I have about 20
13 minutes?

14 THE COURT: You can have until two
15 o'clock. I'll just go down and tell the jury.
16 Thank you.

17 (A luncheon recess is taken.)
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AFTERNOON SESSION - APRIL 24, 2001
(Court in session at 2:04 p.m.)
THE COURT: Thank you very much.
Please be seated.
Bring the jury in, please.
THE COURT OFFICER: Jury's entering.
(The jury enters the courtroom.)
THE COURT: Thank you very much. All

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be seated.
Ladies and gentlemen, my apologies
for the delay, but since last I saw you the
attorneys and I have been working straight through
lunch on a legal issue. The issue, of course, does
not affect the facts, but I want to let you know
we're not sitting here having coolers. We had to do
some work.

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As I told you, from time to time
there are issues that come up that I must speak to
the lawyers about out of your presence, and it
doesn't impact on your weighing of the facts, but
they are necessary. We try to make them as
inconsequential as possible. So we're prepared to
proceed.

Mr. Rosenberg.
Mehlman-Cross/Rosenberg

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MR. ROSENBERG: Thank you, Your
Honor. Good afternoon ladies and gentlemen of the
jury.
BY MR. ROSENBERG:

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Q. Good afternoon, Dr. Mehlman.
A. Good afternoon.
Q. Now, Dr. Mehlman, when you met Mrs.
Mehlman in late 1959 or early 1960, she was also
about 25 years old?
A. Yes.
Q. And she was a very intelligent woman,
was she not?
A. She was intelligent, yes.
Q. Also street smart?
A. Yes.
Q. And I think you testified that she
graduated from high school in the Bronx when she
was -- before she was 17?
A. I was confusing her with her cousin.
She graduated from James Monroe High School. Her
cousin graduated from Bronx High School of Science.
Q. But she graduated from high school
before she was 17?
A. To the best of my recollection, yes.
Q. Then she went onto Hunter College?

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A. Yes.
Q. Which was a pretty good college at
the time and still is?
A. Yes.
Q. She studied social work there?
A. Yes, and psychology.

7 Q. And psychology. And then went on to
8 become a social worker for the American Red Cross,
9 right?

10 A. No. She first worked as a social
11 worker for the State in Westchester County, and then
12 she went to work for American Red Cross.

13 Q. And that's what she was doing when
14 you met her in late 1959 or early 1960, right?

15 A. Yes.

16 Q. And I think we talked this morning,
17 by the time you had met her you had already embarked
18 on your scientific career?

19 A. I'm about to, yes.

20 Q. You had already been researching the
21 effect of toxic substances on humans for the army?

22 A. Yes, I was doing that.

23 Q. Now, when you were studying to be a
24 chemist and an expert on toxic substances in the
25 1950s, you were aware, were you not, that scientists
Mehlman-Cross/Rosenberg 2547
1 were reporting a link between smoking and lung
2 cancer?

3 A. Not in 1950s. I was very busy
4 working -- I worked from 8 in the morning until
5 about 5, 5:30, and then I went to school and started
6 taking classes between 7:30 and 8 o'clock until 11
7 or 12 o'clock at night.

8 Q. So it's your testimony that you were
9 completely unaware that scientists had reported any
10 link between smoking and lung cancer?

11 A. I can't say that. As I sit here
12 today, I don't recall looking at cigarette smoking
13 in any way, or anything that is scientific.

14 Q. Just to be --

15 THE COURT: Let him finish.

16 Q. I'm sorry. I apologize.

17 THE COURT: Are you finished with
18 your answer?

19 THE WITNESS: Yes, yes.

20 Q. Just to be clear, Dr. Mehlman, you
21 were a regular newspaper reader, were you not?

22 A. At that time when I went to school
23 more or less sports, news. That's the extent of
24 reading that I did.

25 Q. And you read the New York Times?
Mehlman-Cross/Rosenberg 2548
1 A. From time to time, yes.

2 Q. I'm sorry.

3 A. From time to time. Mainly I read
4 Washington Post, too, on the subways.

5 Q. And the New York Post?

6 A. Yes.

7 Q. And whatever else you could get hold
8 of?

9 A. No. I had limited time. I was
10 working minimal of ten hours a day, going to school
11 four, five hours, then I had to have little time to
12 study. I really didn't have very much time.

13 Q. From the time you first married
14 Constance Mehlman, you warned her about the health
15 risks of smoking; isn't that true?

16 A. Yes.

17 Q. And you continued to warn her about

18 the health risks of smoking after you got married
19 and moved to Urbana, Illinois?

20 A. Yes.

21 Q. In fact, throughout a good part of
22 your marriage, you and your wife had repeated and
23 quite heated arguments about her smoking?

24 A. We had repeated discussion and
25 arguments, not very heated or very rarely, because I
Mehlman-Cross/Rosenberg 2549

1 don't think she would listen to me. I did what I
2 felt I could do and I backed off.

3 Q. You had screaming fights with her
4 about the health risks of smoking?

5 A. I don't think -- if I had a screaming
6 fight, it may be once every two or three years, but
7 not really fight, discussions.

8 Q. Do you remember being deposed in July
9 of 2000?

10 A. Yes.

11 MR. ROSENBERG: Can we have Volume 1,
12 Page 146, please, Charles.

13 (A videotape was played for the
14 jury.)

15 Q. Was that your testimony in July of
16 2000, Dr. Mehlman?

17 A. That is correct.

18 Q. And in fact, whenever you smelled
19 smoke around the house, you argued with her about
20 smoking?

21 A. Most of the time, yes.

22 Q. In those arguments you told her that
23 smoking was dangerous for her?

24 A. I always told her smoking is bad for
25 her.

Mehlman-Cross/Rosenberg 2550

1 Q. And you told her that more than once?

2 A. Yes.

3 Q. And those screaming fights continued
4 from the time you got married up to and through the
5 time that the Surgeon General issued his report in
6 1964?

7 A. They continued, yes.

8 Q. Until at least the time that the
9 Surgeon General issued his report in 1964?

10 A. At least until that time, and after.

11 Q. And when the Surgeon General's report
12 came out in January of 1964, that was big news, was
13 it not?

14 A. Yes. It was on the radio, it was in
15 newspapers, and some people spoke about it.

16 Q. And it was big news of the month, was
17 it not?

18 A. Well, it was repeated very
19 frequently, yes.

20 Q. Everyone that you knew was aware of
21 it?

22 A. I can't say that everyone that I
23 knew.

24 Q. Certainly Constance Mehlman was aware
25 of it?

Mehlman-Cross/Rosenberg 2551

1 A. I'm certain she heard about it more
2 than once.

3 Q. In fact, you pointed it out to her,
4 did you not?
5 A. I could have. I don't really
6 remember. We all knew about it. That was -- as you
7 pointed out, this was major news at that time.
8 Q. In fact, you did point it out to her,
9 did you not?
10 A. I could have, yes.
11 Q. And you agree that she was capable of
12 understanding what the Surgeon General was saying,
13 did you not?
14 A. Yes.
15 Q. Isn't it true that your wife refused
16 to discuss her smoking with you?
17 A. Yes.
18 Q. Became a very sensitive subject to
19 her?
20 A. Yes.
21 Q. And got wrapped up in other arguments
22 between the two of you, did it not?
23 A. Occasionally we had an argument with
24 that, but since I was not making any progress, just
25 let it go.

Mehlman-Cross/Rosenberg 2552

1 Q. And it's your own belief that if she
2 ever admitted that she should quit it would have
3 been an admission to you that you were right and she
4 was wrong?
5 A. I'm not sure that I would put it that
6 way, because she wanted to quit and she just
7 couldn't.
8 Q. Well, let's see.
9 MR. ROSENBERG: Charles, please,
10 Volume 1, Page 187, Lines 11 to 21.
11 (A videotape is played for the jury.)
12 Q. Was that your testimony, Dr. Mehlman?
13 A. Yes, it is.
14 Q. Dr. Mehlman, in addition to being a
15 very intelligent woman, your wife was also very well
16 read, was she not?
17 A. Yes, she was.
18 Q. She read newspapers every day?
19 A. Every day practically.
20 Q. Particularly the New York Times?
21 A. New York Times all the time.
22 Q. No matter where you were living?
23 A. That's right.
24 Q. When were living in Wisconsin and
25 Illinois and Massachusetts and Nebraska and Maryland

Mehlman-Cross/Rosenberg 2553

1 she always read the New York Times?
2 A. That's correct.
3 Q. Front to back, cover to cover?
4 A. She read the paper, I can't say from
5 Page 1 to Page 20. I know she read it thoroughly.
6 Q. She also was an avid reader of
7 magazines, correct?
8 A. She was.
9 Q. Such as Readers' Digest?
10 A. Yes.
11 Q. In fact, I think you described
12 Readers' Digest as her Bible, correct?
13 A. Yes.

14 Q. And she was also a regular reader of
15 Consumers Reports; is that correct?
16 A. Yes.
17 Q. And she wouldn't buy a product
18 without reading Consumers Reports first?
19 A. Yes.
20 Q. And she read the news weeklies
21 regularly like Time and Newsweek?
22 A. And Look and some other magazine,
23 yes.
24 Q. And Look and Life magazine?
25 A. Yes.
Mehlman-Cross/Rosenberg 2554
1 Q. As far back as you can remember,
2 correct?
3 A. Yes.
4 Q. Now, you never heard her say to
5 anyone while she was smoking that she believed that
6 cigarette smoking was not a cause of lung cancer; is
7 that correct?
8 A. I don't remember hearing that.
9 Q. And similarly, you never heard her
10 say to anyone while she was smoking that she did not
11 believe that cigarette smoking was addictive?
12 A. Not that I remember.
13 Q. Now, Mr. Patrick showed you a letter
14 that was sent to Mobil World by Tobacco Institute.
15 Do you remember that?
16 A. Yes, I do.
17 Q. And that was sent in 1978, right?
18 A. Yes.
19 Q. And we -- now, when you received it
20 you and your colleagues laughed about it; isn't that
21 true?
22 A. I thought it was very unusual for
23 someone to say something like that in 1978.
24 Q. And you and your colleagues just
25 laughed about it?
Mehlman-Cross/Rosenberg 2555
1 A. I'm not sure that everybody laughed
2 about it. I showed it to my colleagues at Mobil.
3 They didn't take it seriously and then I showed it
4 to Professor Selleca (phonetic), a couple other
5 people.
6 Q. In fact, one of your colleagues was
7 Mr. McCullough, right, at Mobil?
8 A. Yes, he was my boss at one time.
9 Q. And he thought it was funny, right?
10 A. As far as I remember, they didn't say
11 anything to me about that letter.
12 Q. You also spoke with Mr. Patrick about
13 that book by Mr. Dunn called Smoking Behavior. Now,
14 you don't -- that you found on Constance Mehlman's
15 bookshelf. You don't know whether Constance Mehlman
16 actually read that book, do you?
17 A. No, I don't know.
18 Q. And you never discussed that book
19 with her; isn't that correct?
20 A. That's correct.
21 Q. Now, Constance Mehlman did not always
22 follow health warnings, did she?
23 A. I don't think that's the case. I
24 think she very seriously followed a lot of -- some

25 of the other health warnings, like the nutrition.
Mehlman-Cross/Rosenberg 2556

1 She always follow her doctor's advice. When she
2 shops, she was very careful, she was sensitive to
3 certain -- synthetic sweeteners whenever she
4 would -- she would be very concerned about it,
5 especially giving it to her children.

6 Q. But you were here when Dr. Goldblatt
7 testified, correct?

8 A. Yes, I was.

9 Q. And you recalled that he mentioned a
10 couple of incidents where he had recommended things
11 that your wife do and she did in the follow that,
12 correct?

13 A. That's incorrect. She did follow
14 that.

15 Q. Eventually followed it?

16 A. No, immediately followed it.

17 Q. Well, according to Dr. Goldblatt's
18 records --

19 A. Yes, sir.

20 Q. Go ahead.

21 A. If I may.

22 Q. Sure.

23 A. She actually, as soon as he told her
24 to get colonoscopy, she went to Dr. Forrester. He
25 was unsuccessful. Anybody who tries to get
Mehlman-Cross/Rosenberg 2557

1 colonoscopy and they cannot penetrate, will not go
2 back for a long, long time. I think that's a
3 procedure that is extremely painful. She did
4 immediately and she couldn't -- didn't wish to go
5 back and be tortured, put through that extreme pain,
6 and eventually she got it done. But she did follow
7 instructions immediately.

8 Q. You're aware that Dr. Goldblatt also
9 talked about his -- the fact that Constance Mehlman
10 did not always comply with his instructions to get
11 asthmatic medicines and to use them?

12 A. I don't know what he said, but I know
13 she would take her medicine religiously.

14 Q. And Mrs. Mehlman didn't follow your
15 advice when you told her that smoking was bad for
16 her health?

17 A. That's correct.

18 Q. Now, after you and Mrs. Mehlman
19 started to go out, there was a period of time when
20 Mrs. Mehlman would not smoke in your presence,
21 right?

22 A. She tried to avoid it, because she --
23 yes.

24 Q. In fact, she was successful in
25 avoiding it most of the time?
Mehlman-Cross/Rosenberg 2558

1 A. Most of the time, yes.

2 Q. And after you and Mrs. Mehlman were
3 married, Mrs. Mehlman was successful not smoking in
4 the house, because she knew you didn't like it in
5 the house, correct?

6 A. She minimized it. She still smoked.

7 Q. And Mrs. Mehlman was also successful
8 in not smoking in front of the children; isn't that
9 correct?

10 A. Most of the time, yes.
11 Q. During the time that Mrs. Mehlman was
12 a smoker, she told you that she smoked because it
13 helped her to keep her weight down; isn't that
14 right?
15 A. That's one of the reasons, yes.
16 Q. And when you first met her she was
17 very thin?
18 A. Yes.
19 Q. And she told you that she ate more
20 when she didn't smoke?
21 A. Yes.
22 Q. She also told you, did she not, that
23 she enjoyed smoking?
24 A. Yes.
25 Q. Now, Dr. Mehlman, you were here for
Mehlman-Cross/Rosenberg 2559
1 opening arguments, were you not?
2 A. Yes.
3 Q. When Mr. Patrick told the jury that
4 it was not the case that you and Mrs. Mehlman did
5 not have a very happy marriage?
6 A. I was here.
7 Q. And I'm going to explore that a
8 little, and I assure you it's not pleasant for me to
9 ask some of these questions, but the fact is that
10 that -- what Mr. Patrick told the jury, that your
11 marriage was not -- that your marriage was a very
12 happy marriage was not totally accurate; is that
13 correct?
14 A. I'm sorry.
15 MR. PATRICK: I'm going to object,
16 Your Honor, based on what I said.
17 THE COURT: It's not evidence?
18 MR. PATRICK: Yes, Your Honor.
19 THE COURT: Sustained.
20 MR. ROSENBERG: I'll rephrase it. I
21 apologize.
22 Q. You were in court when Mr. Evans
23 asked some questions of Ms. Fox, your daughter,
24 about the relationship between you and Mrs. Mehlman?
25 A. Yes.
Mehlman-Cross/Rosenberg 2560
1 Q. You're aware that your wife saw a
2 psychiatrist before you were married; is that
3 correct?
4 A. I'm not certain, but it probably most
5 likely, yes.
6 Q. And you're aware that throughout your
7 marriage your wife sought psychiatric help from time
8 to time in the '60s and in the '70s and in the '80s
9 and in the '90s?
10 A. Yes.
11 Q. In fact, up through the time that she
12 was diagnosed with lung cancer?
13 A. Yes.
14 Q. And you're aware that your wife
15 suffered from stresses throughout her marriage?
16 A. Everybody has stress in marriage,
17 more or less.
18 Q. You're aware that for a good part of
19 the '90s your wife was taking certain antidepressant
20 pills?

21 A. Yes.
22 Q. And you're aware, are you not, that
23 the stresses that your wife felt, many of them had
24 to do with dealing with her immediate family; is
25 that right?
Mehlman-Cross/Rosenberg 2561
1 A. Yes.
2 Q. For example, she had tremendous
3 conflict with your older -- your oldest daughter,
4 Mara?
5 A. She had a conflict with Mara, yes.
6 Q. And that was a great source of stress
7 to her?
8 A. That was a source of stress, but Mara
9 was away most of the time. If you look at the
10 history that she went to school, she wasn't there
11 for many, many years.
12 Q. But in her 20s there was -- there
13 were some incidents that were particularly stressful
14 to your wife?
15 A. Yes.
16 Q. And it's fair to say, is it not, Dr.
17 Mehlman, that Mrs. Mehlman found marriage with you
18 to be chronically stressful to her?
19 A. She also found it extremely happy
20 marriage, as I have couple hundred photographs
21 showing her as happy as she could be for the last 40
22 years, at least 500 photographs.
23 Q. She told you in fact that her
24 relationship with you was a cause of chronic stress
25 to her, did she not?
Mehlman-Cross/Rosenberg 2562
1 A. Sometimes she would say that, yes.
2 Q. And you were aware, were you not,
3 that Mrs. Mehlman felt that you were verbally
4 abusive to her?
5 A. Yes. Any time anybody disagrees with
6 her, at one period of time she felt that was
7 abusive.
8 Q. This lasted over a few years, did it
9 not?
10 A. It lasted over a period of years, but
11 it was very rare and periodic.
12 Q. And it included instances where you
13 called her fat?
14 A. I called -- yes, and then regretted
15 it on occasion because I was very worried about her
16 developing diabetes. She had a family history of
17 diabetes.
18 Q. And it included instances where you
19 called her stupid?
20 MR. PATRICK: I'm going to object,
21 Your Honor. I don't think that's relevant.
22 THE COURT: I'll allow it.
23 A. Yes, in the course of arguments I
24 would call -- I would say these are stupid things to
25 do, and she would interpret it basically as I'm
Mehlman-Cross/Rosenberg 2563
1 calling her stupid.
2 Q. And she felt, over a period of time,
3 that you were not being supportive of her in dealing
4 with family situations; is that true?
5 A. Yes.

6 Q. She also felt that you were
7 controlling and chauvinistic at home, did she not?
8 A. She felt that, yes.
9 Q. In fact, you and she had a business
10 together, a -- you had a business and she was made
11 the president of that business. It was Princeton
12 Scientific Publishing?
13 A. Yes.
14 Q. And she felt that you had shut her
15 out of many aspects of the business, did she not,
16 and you argued about that?
17 A. Some aspects she felt that way, but
18 she was very helpful, because I could not run the
19 business myself without her.
20 Q. In other aspects she felt that you
21 had shut her out and were not giving her the
22 authority that she wanted, correct?
23 A. That's what she felt.
24 Q. That's what she told you?
25 A. Yes.

Mehlman-Cross/Rosenberg 2564

1 Q. And in 1994 she told you that she
2 would leave you if you did not stop demeaning her;
3 is that correct?
4 A. Yes, she said that.
5 Q. But after that you again called her
6 fat and stupid, did you not?
7 A. In the course of an argument I may
8 have said that, yes.
9 Q. You and your wife had an argument in
10 March of 1995, at which time you yelled at her and
11 threatened to break up the house, did you not?
12 A. I'm sorry. What did you say -- the
13 first part?
14 Q. I'm sorry. In March of 1995 when you
15 yelled at her and threatened to break up the house,
16 did you not?
17 A. Yes.
18 Q. And during that same period of time,
19 if your wife was on the telephone and your line
20 rang, you would take the phone away from her, hang
21 up her line in the middle of what she was saying in
22 order to get your call; isn't that right?
23 A. It only happened once.
24 Q. And in March of 1995, you and Mrs.
25 Mehlman had a furious argument over whether or not
Mehlman-Cross/Rosenberg 2565

1 Hope should get paid for certain work that she was
2 doing at Princeton Scientific Publishing Company?
3 A. We had an argument, yes.
4 Q. And you blamed your wife for the
5 argument?
6 A. I don't know who I blamed for the
7 argument. We had no money to pay. There was no
8 money.
9 Q. And your wife -- then you told your
10 wife to take the money from a certain business
11 account and your wife said that she wanted to check
12 with the accountant first?
13 A. That's correct.
14 Q. And you got enraged at her and you
15 threw and broke a portable phone?
16 A. I broke once a portable telephone,

17 yes.
18 Q. And you threatened her with divorce a
19 couple times in 1995 and 1996; isn't that correct?
20 A. Yes.
21 Q. And also in March of 1995 you had a
22 furious argument over a Visa bill, did you not?
23 A. We had an argument over Visa bill,
24 yes.
25 Q. And most of that bill was for her
Mehlman-Cross/Rosenberg 2566
1 psychiatric medication and her asthma medication and
2 food, was it not?
3 A. No. There were many medications, but
4 there were many other items. It was far more than I
5 was able to pay at that time.
6 Q. And you don't recall whether or not
7 you ever hit or pushed your wife, do you?
8 A. In an argument she would try to hit
9 me and I would push her back, yes.
10 Q. And in fact, she hit you all the time
11 because she was frustrated with you?
12 A. Not all the time. Occasionally she
13 would lose her temper and she would try to hit me, a
14 number of times.
15 MR. ROSENBERG: Charles, can we have
16 Volume 2, Page 340, lines 5 to 26.
17 THE COURT: Hold it. Can I see
18 counsel at side bar before you show that? Come up.
19 (The following takes place at side
20 bar outside the hearing of the jury.)
21 THE COURT: Page 340, line 5 through
22 26.
23 MR. MIGLIORI: The microphone is on.
24 THE COURT: 340.
25 MR. ROSENBERG: 5 through 26. I
Mehlman-Cross/Rosenberg 2567
1 could do 5 to 10. Did you ever -- Question: Did
2 you ever hit your wife? No. I tried -- this is the
3 answer. That's something it was very difficult. I
4 attempted, you know, in argument. She hit me all
5 the time.
6 THE COURT: He said. He said she hit
7 me all the time.
8 MR. ROSENBERG: I asked him. He said
9 no. Then he said sometimes.
10 THE COURT: Not all the time. That's
11 why I couldn't understand. Sorry, my mistake.
12 (The following takes place in open
13 court.)
14 THE COURT: I'm sorry, continue.
15 MR. ROSENBERG: If I can find my mic,
16 Your Honor.
17 If we can please have read that
18 section, Charles. Going to the question, did you
19 ever hit your wife.
20 (A videotape is played for the jury.)
21 BY MR. ROSENBERG:
22 Q. Dr. Mehlman, you talked this morning
23 with Mr. Patrick about some quit attempts of your
24 wife of smoking. And you mentioned one in
25 particular in 1962 when you and she were up in
Mehlman-Cross/Rosenberg 2568
1 Massachusetts?

2 A. Yes.
3 Q. Now, when she tried to quit that
4 time, and I think it was for about a few days a
5 week; is that correct?
6 A. I recall that she made an attempt. I
7 was very busy studying that and she was pretty much
8 on her own, so during the days sometimes it was my
9 understanding that she didn't smoke for a couple
10 days.
11 Q. And during that time you did not
12 notice any difference in her behavior; is that
13 correct?
14 A. I did not, because I was always -- I
15 used to leave about 7:30 in the morning and
16 sometimes I would work in the lab until 11 o'clock
17 at night.
18 Q. In fact, you noticed that she was
19 fine; isn't that true?
20 A. Yes, as far as I can tell, she was
21 fine.
22 Q. And you also discussed another quit
23 attempt that began for the duration of the pregnancy
24 with Alison, correct?
25 A. Yes.
Mehlman-Cross/Rosenberg 2569
1 Q. And lasted until you moved to Omaha?
2 A. Yes.
3 Q. And you didn't notice any difference
4 in Mrs. Mehlman's behavior or attitude when she was
5 pregnant with Alison; isn't that correct?
6 A. No. I was at Rutgers and I had to --
7 I left very early and I taught late classes. I
8 would leave at about 7 in the morning and I would
9 come home about 11. Most of the time, except
10 Saturdays and Sundays.
11 Q. But when you did notice your wife
12 during that period, she was fine, wasn't she?
13 A. Yes.
14 Q. You also talked about your wife
15 quitting for good today, correct?
16 A. Yes.
17 Q. For the first time you stated that
18 the quitting was in 1975, as opposed to some earlier
19 date; isn't that correct?
20 A. No, because when you deposed me I
21 couldn't quite remember, is it '73, '74 or mid '70s
22 and while listening to Dr. Feingold many things came
23 back, and last night I went -- I wasn't certain, if
24 I may --
25 Q. No. I think -- I asked the question.
Mehlman-Cross/Rosenberg 2570
1 The question was was that for the first time, yes or
2 no?
3 A. Yes.
4 Q. As a matter of fact, in March of 1999
5 you filed the Complaint in this lawsuit; is that
6 correct?
7 A. Yes.
8 Q. And in the Complaint, if we can pull
9 it up, please?
10 THE COURT: Can I see it before it's
11 published? I want to see it before it's published.
12 MR. ROSENBERG: Just the Judge,

13 Charles.
14 THE COURT: Is there a paragraph
15 you're referring to?
16 MR. ROSENBERG: Paragraph 32.
17 THE COURT: Can I see 32?
18 Okay.
19 Q. May we see Paragraph 32, please. In
20 the Complaint you stated, Finally, after years of
21 struggle, Mrs. Mehlman stopped smoking in 1974,
22 correct?
23 A. Yes.
24 Q. And you previously swore under oath
25 that the statements in the Complaint were accurate,
Mehlman-Cross/Rosenberg 2571
1 did you not?
2 A. That's correct.
3 Q. Now, you were deposed, not by me, I
4 don't want to take either credit or blame, but by
5 Mr. Kraus in July of 2000; is that correct?
6 A. Yes.
7 Q. And you were asked lots of questions
8 as to when Mrs. Mehlman stopped smoking; is that
9 correct?
10 A. Yes.
11 Q. And the only years that you mentioned
12 specifically were 1973 or 1974; isn't that correct?
13 A. Yes, plus mid '70s for additional
14 items that I mentioned.
15 Q. But the specific years that you were
16 giving as illustrative of the mid-'70s were 1973 and
17 1974; is that correct?
18 A. Yes.
19 Q. Do you recall answering a set of
20 written interrogatories in this case?
21 A. Yes.
22 Q. And those are written questions which
23 the lawyers ask, send to your attorneys, and they
24 send on to you and you answer them, correct?
25 A. Yes.
Mehlman-Cross/Rosenberg 2572
1 Q. And those interrogatories asked you
2 to provide information about Constance Mehlman's
3 smoking history, correct?
4 A. Yes.
5 Q. And do you recall answering those
6 interrogatories saying that Connie Mehlman stopped
7 smoking in 1974?
8 A. Yes.
9 Q. You were present in this courtroom
10 when Dr. Goldblatt testified; is that correct?
11 A. Yes.
12 Q. And Dr. Goldblatt was Mrs. Mehlman's
13 treating physician; is that correct?
14 A. Yes.
15 Q. And you were here when Dr. Goldblatt
16 was asked about his taking a detailed medical report
17 in 1984 when he first began to treat Mrs. Mehlman,
18 correct?
19 A. Yes.
20 Q. And he first met her in March of
21 1984, correct?
22 A. Yes.
23 Q. And at that time Dr. Goldblatt told

24 us that Mrs. Mehlman said she quit 10 years before,
25 which would be about March of 1974; is that correct?
Mehlman-Cross/Rosenberg 2573

1 A. That's correct, and that's what I
2 believed all of these years.

3 Q. You were in this courtroom when your
4 daughter Alison testified, correct?

5 A. Yes.

6 Q. And do you remember Alison testifying
7 that Mrs. Mehlman quit smoking when Alison was four
8 years old?

9 A. Yes.

10 Q. And Alison was born on February 28th,
11 1969, correct?

12 A. Yes.

13 Q. So she was four between February
14 28th, 1973, and February 28th, 1974, correct?

15 A. Yes.

16 Q. Now, you were also in the courtroom
17 yesterday, correct?

18 A. Yes.

19 Q. And that's when you heard Dr.
20 Feingold state that in his opinion there was some
21 importance as to whether Mrs. Mehlman quit at age
22 49 -- at age 40 or earlier, correct?

23 A. Yes, he did.

24 Q. And today you've come into court and
25 the first time you've told this jury that your wife
Mehlman-Cross/Rosenberg 2574

1 quit in 1975; is that correct?

2 A. Based on --

3 Q. Is that correct, yes or no?

4 A. Yes.

5 MR. ROSENBERG: Thank you. I have no
6 further questions.

7 THE COURT: Thank you very much.
8 Any redirect?

9 MR. PATRICK: Yes, Your Honor.

10 THE COURT: Let's take five minutes.
11 (The jury leaves the courtroom.)

12 THE COURT: If you want to take five
13 minutes as well.

14 (A recess is taken.)

15 THE COURT: Folks, can we get back?
16 I'd like to bring the jury back in. I'd like to
17 finish with both witnesses.

18 (The jury enters the courtroom.)

19 THE COURT: All right. Thank you
20 very much. Please be seated.

21 Redirect.

22 MR. PATRICK: Yes.

23 Charles -- okay. Sounds like I'm on.

24

25 REDIRECT-EXAMINATION BY MR. PATRICK:
Mehlman-Redirect/Patrick 2575

1 Q. Dr. Mehlman, I have a few questions.
2 Dr. Mehlman, during the course of your 37-year
3 marriage with your wife, Connie, did you have
4 occasion or occasionally have disagreements during
5 that time?

6 A. Yes.

7 THE COURT: Sir, I'm sorry, your mic
8 is not on. The doctor's mic is on, your mic is not

9 on.
10 Q. Let me see if I can reask that
11 question.
12 Dr. Mehlman, over the course of your
13 37-year marriage, were there occasions that you had
14 disagreements with your wife?
15 A. Yes.
16 Q. And during those arguments, did you
17 occasionally say things that you regretted?
18 A. Yes.
19 Q. And on occasion did she say unkind
20 things to you?
21 A. Yes, and she would apologize within
22 an hour.
23 Q. And would you apologize to her?
24 A. Yes. Our arguments never lasted more
25 than a few minutes or couple hours and then we would
Mehlman-Redirect/Patrick 2576
1 make up. Either we would go out and we would each
2 say we are sorry and we went on.
3 Q. In 1989, after you were terminated
4 from Mobil Oil and then litigation began, were those
5 times of stress for both you and Connie?
6 A. Very much, because she attended all
7 of the -- practically all of these depositions and
8 she attended subsequently '94 the trial, and it was
9 very difficult to sit here and hear people telling
10 things that were not true.
11 Q. And after you lost your job with
12 Mobil, were there times of financial hardship for
13 you and your family?
14 A. Somehow my salary was reduced by
15 two-thirds.
16 Q. And did that give you problems, you
17 and your family, you and Connie sometimes in paying
18 bills?
19 A. It was difficult because I had three,
20 at one time four major tuitions on top of everything
21 else.
22 Q. Now, there were mentions of your
23 threatening divorce or Connie threatening divorce.
24 Did there ever come a time where you filed for a
25 divorce from Connie?
Mehlman-Redirect/Patrick 2577
1 A. That threat never lasted more than
2 two hours more less filing.
3 Q. And did she ever file for divorce
4 regarding you?
5 A. Never. She never even consulted an
6 attorney.
7 Q. Prior to 1975, had you done any
8 research in the area of smoking and health?
9 A. No.
10 Q. And for that matter have you ever
11 done any research in the area of smoking and health?
12 A. No.
13 Q. And do you have any specialized
14 knowledge in the area of smoking and health?
15 A. No.
16 Q. Was Connie a toxicologist?
17 A. No.
18 Q. What health risks -- there were
19 discussions of health risks that you would discuss

20 with Connie. What health risk were you aware of in
21 the early 1960s?

22 A. Smoking is very bad for you. I was
23 very afraid of her breathing problem, her asthma --
24 in a smoker asthma gets severely aggravated and
25 difficulty in breathing, and that would practically
Mehlman-Redirect/Patrick 2578

1 panic me because if that happens in a severe asthma
2 attack, you must go to the emergency room.

3 Q. Mr. Rosenberg asked you about the
4 Surgeon General's report that appeared in 1964. Do
5 you recall what the Surgeon General said in 1964
6 about the risk of lung cancer for smoking in women?

7 A. I don't believe it said anything
8 about women.

9 Q. Now, I believe there's some letters,
10 two of which are dated July 12 -- one is dated July
11 11, 1975, and one is July 1, 1975. One is signed by
12 you -- I showed these to Mr. Rosenberg, Your Honor.

13 THE COURT: Do you want to see them
14 again?

15 MR. ROSENBERG: I have an objection
16 to showing the witness without some predicate
17 questions.

18 THE COURT: Can you come to side bar
19 so we can discuss this?

20 (The following takes place at side
21 bar outside the hearing of the jury.)

22 MR. PATRICK: Your honor, these are
23 two letters and the only reason that they have any
24 relevance as it jogs his memory concerning dates.
25 These letters reminded him of when he joined NIH and
Mehlman-Redirect/Patrick 2579

1 that relates to when he recalls her quitting
2 smoking. I'm not offering it for the substance of
3 what they say.

4 THE COURT: Go ahead.

5 MR. ROSENBERG: We just saw this a
6 few moments ago, and my problem is if in fact Dr.
7 Mehlman is going to testify that something jogged
8 his memory, I think that he should, I guess, testify
9 to that before you show it to him.

10 THE COURT: That's exactly what I was
11 going to say. You haven't laid the predicate. If
12 you're showing him a documents, Does this refresh
13 your recollection? You have to first establish that
14 his recollection isn't what it should be or that
15 there's doubt. You just can't say here now is
16 that -- let's go back, and asking this morning you
17 didn't give me the right answer to que me on.

18 MR. BIERSTEKER: The memory has
19 already been refreshed with the judo suit.

20 MR. PATRICK: Don't worry, the judo
21 suit will not see the light of the courtroom.

22 THE COURT: Thank you.

23 (The following takes place in open
24 court.)

25 THE COURT: Go ahead, sir. Wait a
Mehlman-Redirect/Patrick 2580

1 minute. You're not publishing these at this point?

2 MR. PATRICK: No, Your Honor. I'm
3 just going to ask some questions.

4 THE COURT: All right. Go ahead.

5 BY MR. PATRICK:
6 Q. Dr. Mehlman, were there any items in
7 your possession that helped you refresh your
8 recollection regarding when your wife Constance quit
9 smoking cigarettes?
10 A. Yes.
11 Q. And what items refreshed your
12 recollection?
13 A. I knew that she started smoking when
14 I was at NIH.
15 Q. Started or stopped?
16 A. Excuse me. Stopped smoking, I
17 apologize, when I was at National Institutes of
18 Health, and in that period of time I took her to
19 Seventh Day Adventist. I wasn't certain when I
20 joined NIH, and when I got back last night I
21 searched for documents and find two memorandums from
22 Deputy Director of NIH giving me a specific
23 assignment. One is to coordinate nutrition
24 committee, and second, a memorandum to the deputy
25 director of NIH telling him that I spoke to
Mehlman-Redirect/Patrick 2581
1 Professor Henry Lardi (phonetic), who was working on
2 SIDS, Sudden Infant Death Syndrome, and he
3 postulated a hypothesis that most of the SIDS were
4 due in infants to hypoglycemic effect. He studied
5 126 infants that have --
6 Q. Sir.
7 A. I'm describing.
8 Q. You don't need to tell us about the
9 substance.
10 THE COURT: Perhaps if you asked him
11 to enumerate.
12 Q. Could you enumerate the documents
13 and/or letters that refreshed your recollection as
14 to the timing of when Connie quit smoking?
15 A. The documents?
16 Q. Yes.
17 A. Memos at NIH when I joined, and, two,
18 karate suit that I purchased in 1975. So both -- we
19 both purchased that and I found it this morning in
20 my basement. Once I found that I had great degree
21 of confidence when she really started smoking and
22 there's a reason for that, I can enumerate why.
23 Q. Let's just talk about the documents,
24 Dr. Mehlman. There are two documents that you
25 handed me, one is July 1, 1975, and the other is
Mehlman-Redirect/Patrick 2582
1 July 11, 1975. What do either of these documents
2 have to do with your recollection as to when Connie
3 Mehlman quit smoking cigarettes?
4 A. She quit smoking when I was working
5 for NIH, and this refreshed my memory that I was
6 working -- I wasn't certain. I was getting
7 confused, because it was the same department. I
8 moved in '74 I thought possibly, but I actually
9 moved in 1975. I was -- accepted the position at
10 National Institutes of Health. That reassured me
11 that I was there 1975.
12 MR. PATRICK: May I approach, Your
13 Honor.
14 THE COURT: I don't know. He just
15 enumerated the documents. Is it necessary now to

16 have him read the documents?
17 MR. PATRICK: I just wanted him to
18 identify them at this point.
19 THE COURT: Sure. Sure.
20 Q. Dr. Mehlman, I'm going to show you a
21 document of July 1, 1975. Is this one of the
22 letters that refreshed your recollection about the
23 dates of Connie quitting smoking?
24 A. Yes. This is a memo to Lamont-Havers
25 from me, who was deputy director subsequently of
Mehlman-Redirect/Patrick 2583
1 National Institutes of Health and then he was acting
2 director of National Institutes of Health.
3 Q. Let me show you another one, July 11,
4 1975. Without telling us the substance of the
5 letter, is this one of the letters that refreshed
6 your recollection about the date at which Connie
7 quit smoking?
8 A. Yes.
9 Q. Now, Mr. Rosenberg asked you about
10 the amount of money you received in your award from
11 Mobil, the judgment from Mobil?
12 A. Yes.
13 Q. And I would like to ask you, what did
14 you do with the money that you received from Mobil?
15 A. Half of it, three and a half million
16 dollars went to --
17 MR. ROSENBERG: Objection, Your
18 Honor.
19 THE COURT: What purposes?
20 MR. ROSENBERG: Relevance.
21 THE COURT: Come to side bar, bring
22 the reporter.
23 Can you retrieve these items, please?
24 (The following takes place at side
25 bar outside the hearing of the jury.)
Mehlman-Redirect/Patrick 2584
1 MR. ROSENBERG: The question as I
2 understand, what he did with the money. And what
3 someone does with the money has absolutely no
4 relevance to any issue in this case. The door was
5 opened by Mr. Patrick initially saying he prevailed,
6 he won, let the jury know how much he won and how
7 much the judgment is.
8 THE COURT: I already moved that. I
9 moved it in your favor. It was a public record, it
10 wasn't a problem.
11 MR. ROSENBERG: This is not -- this
12 is -- I don't know what his answer is, but I assume
13 the answer is intended to get sympathy or praise for
14 this plaintiff, which will bring graces --
15 MR. PATRICK: I don't think it's
16 relevant to raise the issue of what he -- the fact
17 that he received this money, and I think we're
18 entitled at this point to show that he used it for
19 public health purposes. For good purposes, as Mr.
20 Rosenberg pointed out.
21 MR. ROSENBERG: Was that a dumb guess
22 on my part?
23 THE COURT: I know the history, but I
24 can't remember. The seven million is the
25 compensatory?
Mehlman-Redirect/Patrick 2585

1 MR. PATRICK: That's correct.
2 THE COURT: We had no discussion of
3 punitive. I know you kept away from that. I
4 appreciate that. I just want to make sure.
5 MR. PATRICK: This is my final
6 question.
7 THE COURT: I appreciate that. It
8 doesn't make it any more admissible.
9 MR. PATRICK: I understand.
10 THE COURT: What is your purpose of
11 bringing out this testimony?
12 MR. PATRICK: The purpose is to
13 clarify the record. He received the money and that
14 his use of the money has allowed him to do things
15 with regard to public health that he otherwise could
16 not do. It completes the ending of the story.
17 MR. BIERSTEKER: The punitive damages
18 are still left out. Let's say he gave the whole
19 total to public health purposes, you know.
20 MR. ROSENBERG: The compensatory
21 part, as I remember, is three and a half million and
22 the rest was punitive.
23 THE COURT: That's what he just
24 asked.
25 MR. ROSENBERG: The seven and a half.
Mehlman-Redirect/Patrick 2586
1 MR. BIERSTEKER: That doesn't include
2 the punitive.
3 MR. ROSENBERG: It does.
4 MR. BIERSTEKER: I'm mistaken.
5 THE COURT: That's what I want to
6 keep away from, because I don't want to inject
7 punitive damage here before the jury. The question
8 should have been, What amount of compensatory
9 damages did you receive? Three and a half million.
10 Now the jury thinks it's seven million on
11 compensatory, because we haven't told them the
12 punitive damages.
13 MR. ROSENBERG: The money was
14 actually taken from his deposition as a lump sum.
15 THE COURT: I understand, but I
16 didn't get to rule on it at that point.
17 MR. ROSENBERG: My understanding is
18 probably figured it close to 10 million, because
19 they had an initial interest chunk. You might be
20 the right, the seven million is compensatory and the
21 rest interest.
22 THE COURT: Now we got punitive
23 damages before the jury. Now the jury is faced with
24 an uncertain judgment, that's why I specifically --
25 let's exclude punitive. Now we got this problem to
Mehlman-Redirect/Patrick 2587
1 confuse the jury.
2 Let me ask you this: Without him
3 giving the answer, is the question perhaps to the
4 greater portion of the money that you received in
5 compensation for your job loss, go to -- did you
6 keep or give to other purposes outside of your use?
7 MR. PATRICK: Yes.
8 THE COURT: I don't know how else to
9 go on. Otherwise we got a big problem. Because now
10 the jury thinks -- there's a difference between
11 compensatory and punitive. There's a big --

12 MR. ROSENBERG: The jury's not heard.
13 THE COURT: I understand that, but
14 now we got to tell them. Okay? Now it may
15 affect -- it's not the amount that I said goes to
16 the jury was the compensatory, not the punitive.
17 I'm not saying it's your fault, Ezra.
18 MR. ROSENBERG: I understand, but
19 I -- I can check this fairly quickly, I think, but I
20 think the seven million approximates compensatory
21 plus interest, but not punitive.
22 THE COURT: Mr. Haefele, could you
23 join us a minute, please?
24 MR. HAEFELE: Yes.
25 MR. ROSENBERG: Ask Bruce or --
Mehlman-Redirect/Patrick 2588
1 MR. HAEFELE: Yes, Judge.
2 THE COURT: We have to wait for Mr.
3 Biersteker.
4 MR. HAEFELE: I thought I was
5 replacing him.
6 THE COURT: No.
7 Mr. Biersteker, I'd rather not have
8 this discussion openly. If you want to talk to them
9 on the side, that's fine.
10 THE COURT: Did you get an answer?
11 MR. BIERSTEKER: They're getting the
12 decision.
13 THE COURT: The question is the
14 \$7,000,000 that he got, was that compensatory plus
15 interest or was that compensatory and punitive?
16 MR. HAEFELE: I don't know, but I can
17 find out. I don't know that.
18 THE COURT: Okay. I need to find
19 that out right now.
20 MR. HAEFELE: I could actually
21 probably call back to my office and find out that
22 information.
23 THE COURT: Can you do that?
24 MR. HAEFELE: Yes, I will.
25 (There is a discussion off the
Mehlman-Redirect/Patrick 2589
1 record.)
2 THE COURT: The part of the answer
3 now, through no one's fault, seven million is
4 hanging out there. We don't know if it's punitive
5 and compensatory or compensatory and interest. I
6 just don't know. I will allow you to ask the
7 question to the extent, one question, one shot,
8 majority of the money that you kept -- kept for
9 personal use, or use outside of --
10 MR. BIERSTEKER: Immediate family.
11 MR. ROSENBERG: That's fine.
12 THE COURT: Is that agreeable to
13 everyone?
14 MR. ROSENBERG: That's agreeable.
15 (The following takes place in open
16 court.)
17 THE COURT: Ready. Go ahead.
18 BY MR. PATRICK:
19 Q. Dr. Mehlman, of the money that you
20 received in the award from Mobil that you kept, was
21 the majority of it, or did the majority of it allow
22 you to do projects in the field of public health

23 outside of what you kept personally or what was
24 retained by the immediate family?
25 A. Yes.
Mehlman-Recross/Rosenberg 2590
1 MR. PATRICK: I don't have any
2 further questions.
3 THE COURT: Thanks. Recross.
4 MR. ROSENBERG: Thank you.
5
6 RECROSS-EXAMINATION BY MR. ROSENBERG:
7 Q. Very briefly, Dr. Mehlman, you
8 mentioned in 1964 a Surgeon General's report. In
9 fact, in your Complaint did you not date the time
10 period at which Constance Mehlman started to stop
11 smoking from 1964 when the Surgeon General issued
12 his report?
13 A. I'm sorry. I don't quite understand
14 the question. Maybe you can make it a little
15 simpler.
16 Q. In the Complaint that you filed in
17 this action?
18 A. Yes.
19 Q. Did you not state that it was
20 beginning in 1964 when the United States Surgeon
21 General issued his report concluding that cigarette
22 smoking was the cause of lung cancer that Constance
23 Mehlman began to stop smoking?
24 A. She made many attempts, yes.
25 Q. From that date forward?
Mehlman-Recross/Rosenberg 2591
1 A. Yes.
2 Q. Now, just very briefly on this issue
3 of the date by which she smoked her last cigarette.
4 The fact is that you have -- excuse me. On direct
5 you mentioned this karate suit and then on redirect
6 you mentioned these two letters from the NIH as
7 things that jogged your memory, correct?
8 A. Yes.
9 Q. In fact, you've had these items in
10 your possession for years and years, correct?
11 A. I have many items for 30 and 40
12 years, but doesn't mean that I see them.
13 Q. And, in fact, you've had them in your
14 possession and you knew that the issue of when your
15 wife smoked her last cigarette was an issue in this
16 case; is that correct?
17 A. Yes.
18 Q. And until today, after listening to
19 Dr. Feingold yesterday, you never brought it to the
20 attention of us in discovery and you testified about
21 it for the first time this morning; is that correct?
22 A. Yes.
23 Q. And, in any event, no matter what
24 date Constance Mehlman last smoked a cigarette, in
25 your mind she could have quit smoking earlier if she
Mehlman-Recross/Rosenberg 2592
1 really wanted to; is that correct?
2 A. Well, I don't really think so,
3 because she did try.
4 Q. Yes or no?
5 A. Well, if a person really wants to,
6 the answer has to be if they can, they could.
7 Q. And she could have if she really

8 wanted to, yes or no?
9 A. Obviously, she -- all right. Yes.
10 MR. ROSENBERG: Thank you. No
11 further questions.
12 THE COURT: Mr. Patrick, anything?
13 MR. PATRICK: No.
14 THE COURT: Thank you very much, Dr.
15 Mehlman.
16 THE WITNESS: You're welcome.
17 THE COURT: Take the mic off and
18 you're excused as a witness.
19 MR. PATRICK: May we have a side bar
20 as far as the next.
21 THE COURT: Folks get up and take a
22 stretch.
23 (Discussion held off the record
24 outside the hearing of the jury.)
25 THE COURT: All right. Next witness.
Mehlman-Direct/Migliori 2593
1 MR. MIGLIORI: Your Honor,
2 plaintiff's would like to call Hope Mehlman, please.
3 THE COURT: Hope Mehlman to the
4 stand, please. Be sworn.
5 THE COURT OFFICER: Please state your
6 full name for the record.
7 MS. MEHLMAN: Hope Dana Mehlman,
8 M-e-h-l-m-a-n
9
10 H O P E D A N A M E H L M A N, having been duly
11 sworn according to law by the officer, testifies as
12 follows:
13
14 THE COURT: That's the line I want to
15 hear. All right. Can you mic this lady up, please?
16 I'm going to ask you, as you
17 witnessed, keep your voice up. Okay?
18 THE WITNESS: Yes.
19
20 DIRECT EXAMINATION BY MR. MIGLIORI:
21 Q. Good afternoon, Hope.
22 A. Good afternoon.
23 Q. We're late in the day and we'll try
24 to do this quickly.
25 A. Okay.
Mehlman-Direct/Migliori 2594
1 Q. Where do you currently reside?
2 A. In [DELETED]
3 Q. Are you marry?
4 A. Yes, I am.
5 Q. What's your husband's name?
6 A. Eli Horowitz.
7 Q. How long have you been married?
8 A. Almost 12 years.
9 Q. Do you have any children?
10 A. Yes, I have two children.
11 Q. What are their names and ages?
12 A. Haley and she's six and a half.
13 Jonathan, he's three. Three and a half going on
14 four, as he says.
15 Q. What do you do?
16 A. I'm an attorney.
17 Q. What kind of law do you practice?
18 A. I practice transactional business

19 law.
20 Q. Do you do this work in court?
21 A. No, thank God.
22 Q. Do you do any volunteer work?
23 A. Yes, I do.
24 Q. What kind?
25 A. I'm on a board of directors of a
Mehlman-Direct/Migliori 2595
1 nonprofit organization in Birmingham called Oasis.
2 It's a women's counseling center that provides
3 counseling for all women and children of all socio
4 and economic backgrounds.
5 Q. And you're the daughter of Myron and
6 Constance Mehlman; is that correct?
7 A. Yes, I am.
8 Q. When were you born?
9 A. November 30, 1964.
10 Q. Where was that?
11 A. In Boston, Massachusetts.
12 Q. And you have two siblings?
13 A. Yes, I do.
14 Q. And their names?
15 A. Mara, she is 39; and Alison is 32.
16 I'm the middle child.
17 Q. Okay. And Alison and your father
18 have both testified in this court. Do you know
19 that?
20 A. Yes, I do.
21 Q. And they've talked about all the
22 different places you've lived in your life?
23 A. Yes.
24 Q. You're aware of that?
25 A. Uh-huh.
Mehlman-Direct/Migliori 2596
1 Q. Do you remember your childhood?
2 A. Yes, I do.
3 Q. And specifically to your relationship
4 with your mom, what do you remember about your
5 childhood?
6 A. My mother was a wonderful mother. My
7 mother was a strong person, she was smart, she was
8 beautiful. She took care of all of us and she took
9 care of my father very well.
10 Q. Were you a close-knit family?
11 A. Yes, we were a very close-knit
12 family.
13 Q. And were you a happy family?
14 A. Yes, we were a happy family.
15 MR. MIGLIORI: Can I have P-53,
16 please?
17 Q. Can you tell us who's in this
18 picture?
19 A. Yes. That is my Grandmother Ester,
20 my mother's mother, my sister, and I'm sitting in my
21 grandmother's lap with my pigtails.
22 Q. Based on your observations, your
23 knowledge of your mother, was it important for you
24 to have a relationship with your grandmother?
25 A. Extremely important.
Mehlman-Direct/Migliori 2597
1 Q. Okay. Now, did your mom play an
2 active role in your day-to-day life as a child?
3 A. Yes, she did.

4 Q. Can you describe that, please?
5 A. My mother made sure that we had
6 ballet and tap lessons, that we had music lessons.
7 I started off with violin, but didn't do so well, so
8 went on to piano and my mother made sure --
9 Q. Did your mom work when you were young
10 growing up?
11 A. My mom was a stay-at-home mom.
12 Q. You described dance and some other
13 things. Was exercise important in your childhood?
14 A. Yes, exercise was important. It was
15 always important throughout my life.
16 Q. Why?
17 A. Because my mother's father had
18 diabetes, so she was concerned about our diets and
19 our weight and, therefore, exercise was a part of
20 that.
21 Q. In your early childhood were you
22 close with your mom?
23 A. Yes.
24 Q. As you grew older and you entered
25 into adolescence, did your relationship with your
Mehlman-Direct/Migliori 2598
1 mom change at all?
2 A. My relationship with my mother always
3 got stronger and deeper.
4 Q. And what do you remember most about
5 your relationship with your mother in your
6 adolescent teenage years?
7 A. Basically that my mother was always
8 my mother, but it started transforming into a
9 relationship where she became my friend and my
10 confidant.
11 Q. Did you remain a close-knit family in
12 your teenage years?
13 A. Yes.
14 THE COURT: Excuse me.
15 Q. Did you travel together --
16 A. Yes, we did.
17 THE COURT: I appreciate your
18 answering his questions. Let him finish, then you
19 can answer and he'll ask another question. Only
20 because she's taking down, she has to finish all the
21 questions. Okay?
22 THE WITNESS: Sure. I'm sorry.
23 THE COURT: No problem.
24 Q. Did you travel together in your
25 teenage years?
Mehlman-Direct/Migliori 2599
1 A. Yes, we traveled together.
2 Q. And your father showed some of those
3 pictures this morning?
4 A. Yes.
5 Q. Now, were those, your teenage years,
6 happy years in your life?
7 A. Very happy, yes.
8 Q. Were they happy years in your family?
9 A. Yes.
10 Q. Were they happy years for your mother
11 based on what you saw?
12 A. Yes.
13 Q. Did you notice while your parent --
14 while you were a teenager what kind of relationship

15 your parents had amongst each other?
16 A. Yes.
17 Q. How would you describe that
18 relationship?
19 A. They had a very strong, loving,
20 caring relationship. They took care of each
21 another.
22 Q. Was education important in your
23 family?
24 A. Yes, it was extremely important.
25 Q. Did you go and graduate from high
Mehlman-Direct/Migliori 2600
1 school?
2 A. Yes.
3 Q. When was that?
4 A. 1983.
5 Q. From where did you graduate?
6 A. Princeton High School.
7 Q. And that's here in New Jersey?
8 A. Yes.
9 Q. When you graduate high school, did
10 you go on to college?
11 A. Yes.
12 Q. And where did you go to college?
13 A. I started at Douglass College and
14 then I transferred after a semester to Cornell
15 University.
16 Q. And did you graduate ultimately from
17 Cornell University?
18 A. Yes, I did.
19 Q. And that's in New York?
20 A. Yes, Ithaca, New York.
21 Q. And after you went to Cornell, did
22 you then go on to law school?
23 A. Yes.
24 Q. Where did you go to law school?
25 A. I went to Seton Hall Law School in
Mehlman-Direct/Migliori 2601
1 Newark.
2 Q. And when did you start at Seton Hall?
3 A. In the fall of 1988.
4 Q. When you started at Seton Hall, where
5 did you live?
6 A. At lived at home with my parents.
7 Q. And that was in 1988?
8 A. Yes.
9 Q. From 1988 until your mother passed
10 away, where did you live?
11 A. I lived at home with my parents.
12 Q. Was law school a particularly
13 stressful time for you?
14 A. In the beginning law school was
15 difficult, because you don't really know what to
16 expect, but living at home with my parents made it
17 much easier. As time goes on you figure out,
18 hopefully, what to do, so.
19 Q. Now, your father described your
20 mother attending law school; is that correct?
21 A. Yes.
22 Q. Where did she attend law school?
23 A. She also attended Seton Hall Law
24 School.
25 Q. She went to school with you?

1 A. Yes, and as my dad said, we were the
2 first mother-daughter -- there had been a
3 father-son, but we were the first mother-daughter.

4 Q. You were the first mother-daughter to
5 attend Seton Hall?

6 A. Correct.

7 Q. At the same time, correct?

8 A. Correct, yes.

9 Q. What was it like to go to law school
10 with your mother?

11 A. It was -- it was really fun. My
12 mother -- at first it was a little strange, because
13 she'd be walking down the halls and you see these
14 22-year-old guys going, Hey, Connie what's up? God,
15 they never say hello to me.

16 But it was really fun and we took one
17 class together. That was great, and it was just --
18 I was really proud of her.

19 Q. Based on your observations of your
20 mother, what kind of experience was going to law
21 school at that stage in her life like?

22 A. It was a challenging, wonderful
23 experience. My mother had always emphasized,
24 especially for us girls, it was very important that
25 we went to school, that we got an education, that we

1 were self-reliant, that we had a career. Especially
2 for women she thought that was important and --

3 Q. Did you commute together?

4 A. Yes, we did.

5 Q. You drove together in a car up to
6 Seton Hall?

7 A. Yes. First we started taking the
8 train, but then you'd have to wait for -- in the
9 afternoon it would come on the hour, so we decided
10 to drive together.

11 Q. Now, you graduated from Seton Hall in
12 what year?

13 A. In 1991.

14 Q. And when did your mother graduate?

15 A. In 1992.

16 Q. So she was one year behind you?

17 A. Yes.

18 Q. What if anything was unique about
19 your relationship with your mother as compared to
20 your sisters?

21 A. I had the opportunity to go back home
22 after college and to live with my mother and to
23 really get to know my mother as a friend and a
24 confidant, and I was extremely close with my mother.
25 She's my best friend.

1 Q. Now, you finished law school, I
2 believe it was in 1991?

3 A. Yes.

4 Q. And you went on to get another degree
5 in law, correct?

6 A. Correct.

7 Q. What kind of degree was that?

8 A. I went to NYU Law School to get a
9 Masters of Law in Taxation. Very exciting to read
10 the tax code, but somebody's got to do it, I guess.

11 Q. So you went and got a master's
12 degree?
13 A. Yes, I did.
14 Q. And you continued, you said, to live
15 with your mother in your parents' home until
16 actually up to the time she passed away; is that
17 correct?
18 A. That's correct.
19 Q. Now, at some point in time you got
20 engaged to Eli, correct?
21 A. Correct.
22 Q. When was that?
23 A. I was engaged to him in 1987.
24 Q. And throughout the course of your
25 engagement you continued to live at your home?
Mehlman-Direct/Migliori 2605
1 A. Yes, that's correct. After --
2 Q. Your parents' home?
3 A. Yes.
4 Q. Even after you were married, did you
5 continue to live with your parents in your parents'
6 home in New Jersey?
7 A. Yes, except for one period, one
8 summer.
9 Q. Okay. And why was it? Where was
10 your husband at this time?
11 A. My husband was in California working
12 for a company called National Semiconductor.
13 Q. In the summers while you were still
14 in law school and living with your parents but yet
15 still married, did you ever go out to California?
16 A. Yes, I did.
17 Q. Did you live there for the summer?
18 A. I lived there for the summer.
19 MR. MIGLIORI: Could I have P-54,
20 please?
21 Q. Can you tell us about this
22 photograph?
23 A. Yes. After my first year of law
24 school I got married and I was out in California and
25 my mom came out to visit and that's us at Yosemite
Mehlman-Direct/Migliori 2606
1 National Park.
2 Q. At this point in time you two are
3 both students at Seton Hall?
4 A. Yes, we're classmates.
5 Q. And your mother came out to visit
6 that summer while you were living there just for the
7 summer?
8 A. Yes.
9 Q. At some point in time after you
10 graduated from law school, did you go to work in the
11 family business?
12 A. Yes.
13 Q. The publishing business your father
14 spoke of?
15 A. Yes.
16 Q. And tell us about that experience.
17 What was that like for you?
18 A. It was -- when I started working in
19 the business, my mother had been in law school and
20 it wasn't doing very well, and we started working in
21 the business together and it was just this

22 incredible experience that we could take this
23 business that wasn't doing well and really see our
24 strengths and abilities to build this business up
25 and be able to work with my mother and it was great.
Mehlman-Direct/Migliori 2607

1 Q. And did you also work with your
2 father?

3 A. Yes.

4 Q. How was that?

5 A. That was also wonderful.

6 Q. Working in the business, what did you
7 observe of the relationship between your mother and
8 your father at home in the home business?

9 A. The relationship was a good
10 relationship. On occasion there would be
11 disagreements, but most of the time it was -- 99
12 percent of the time everybody was very happy and
13 everybody worked well together and lived well
14 together.

15 Q. There was some testimony about your
16 father's termination from Mobil Oil. Do you recall
17 when that happened?

18 A. Yes.

19 Q. At that period of time was there some
20 stress in your home?

21 A. Sure. There was disappointment in
22 the house, shock at first, but my mom was very
23 supportive and my dad always has this positive
24 outlook and we had friends who -- my dad eventually
25 got a job, and we had friends that supported us and
Mehlman-Direct/Migliori 2608

1 believed us.

2 Q. Was your family able to overcome that
3 situation?

4 A. Yes, as long --

5 THE COURT: We only got up to was
6 your family able to overcome. I didn't hear the
7 rest of that question.

8 A. I'm sorry.

9 Q. That situation.
10 Was your family able to overcome that
11 situation, the termination of your father at Mobil
12 Oil?

13 A. Yes.

14 Q. And did your family remain close
15 knit?

16 A. Yes.

17 Q. Now, what did you see the role of
18 your mother to be in that home business?

19 A. My mother was the president of the
20 company and she really did a lot of the
21 administrative tasks of the company. She really ran
22 the day-to-day business. She made the major
23 decisions concerning the business.

24 Q. I'm going to change gears a little
25 bit. There's been a lot of discussion about diet,
Mehlman-Direct/Migliori 2609

1 about your family's health and diet. Based on your
2 own observations and your knowledge of your mother,
3 was diet an important issue to your mother?

4 A. Yes, it was a very important issue.

5 Q. Why?

6 A. Well, it was important because, as I

7 told you earlier, her father had diabetes and so she
8 was always concerned about diet and exercise and
9 also there was a time when we were -- you know, in
10 the house, we were drinking diet soda when it first
11 came out, Tab. I don't know if it's still out or
12 not, but there was a period of time when it became
13 known that saccharin may cause -- may have health
14 hazards, and my mother immediately stopped drinking
15 Tab, stopped us all drinking Tab. So it was clear
16 to me that this was very important to her.

17 Q. What about the foods you ate? You
18 mentioned some -- Tab, for example. Did your mom
19 have any concerns about the types of foods you ate?

20 A. Sure. My mother was always concerned
21 we always had to have vegetables and very little red
22 meat, but we had chicken and fish and even -- I even
23 remember when we used to have -- a lot of things
24 focused around drinks. We used to love getting
25 Shirley Temples and the maraschino cherry in them,
Mehlman-Direct/Migliori 2610

1 and when it became known that red dye also may be
2 hazardous to our health, we were done with Shirley
3 Temples, we were done with Tab, and we were back to
4 milk, so.

5 Q. Was your mom concerned about her own
6 weight?

7 A. Yes.

8 Q. Was she, based on your observations,
9 was your mother concerned about exercise?

10 A. Yes, she was concerned about
11 exercise.

12 Q. Did you and your mother ever exercise
13 together?

14 A. Yes, all the time.

15 Q. Could you describe that?

16 A. We had -- we had two dogs and we
17 would frequently walk them around the block. During
18 the winter it would be very cold so we went out --
19 first we got the Nordic Track, but we were both not
20 too coordinated, we kept falling off the Nordic
21 Track. Then we moved to the stationary bicycle and
22 then eventually we went to Price Club and got a
23 treadmill and we would compete who could incline it.
24 It didn't have to be fast, but who could incline and
25 walk the longest.

Mehlman-Direct/Migliori 2611

1 Q. Did you ever do errands with your
2 mother?

3 A. Yes.

4 Q. What kind of errands would you run?

5 A. Go to the grocery store, shopping,
6 those kinds of things.

7 Q. In those experiences did your mother
8 ever demonstrate anything to you that she was
9 concern about the types of things that you consumed?

10 A. Sure.

11 Q. Describe that.

12 A. When we would go into the
13 supermarket, she would turn over and read the
14 labels, and I remember that she was focused on, you
15 know, teaching me the difference between what was
16 important, the fat, more so than -- and then the
17 calories. Because I always thought calories were,

18 but she also would look at the ingredients and make
19 sure there weren't any things like Red Dye Number 5
20 or --

21 Q. I'm going to move on again. Again,
22 it's getting late. There came a time when you
23 decided to have your own family; is that correct?

24 A. Yes.

25 Q. And did you turn to your mother for
Mehlman-Direct/Migliori 2612
1 any guidance or support when you and Eli reached
2 that point in your relationship?

3 A. Absolutely.

4 Q. Can you describe that, please?

5 A. Well, when I became pregnant Eli --
6 my mother would go with me. My husband was in
7 medical school and working full time, so my mother
8 would go with me to all my doctor's appointments.
9 There was a -- I had bad morning sickness and there
10 was a period of time when I was having trouble
11 taking the prenatal vitamins because they made me
12 even more nauseous. And my mother would sit me down
13 and make me take that prenatal vitamin and wouldn't
14 leave me until I swallowed that prenatal vitamin.

15 Q. And your first child that you had was
16 Haley; is that correct?

17 A. That's correct.

18 MR. MIGLIORI: May I have P-55,
19 please.

20 Q. Can you describe this picture for us?

21 A. Yes. That's my mother and my father
22 at Columbia-Presbyterian holding Haley. I don't
23 even think they noticed that we took the picture.

24 Q. How old was Haley in that picture?

25 A. About a day old.

Mehlman-Direct/Migliori 2613
1 Q. Is it true that you never changed the
2 diapers of your baby?

3 A. No. I changed maybe five, but I have
4 to tell you that my dad would. I have to pick
5 company of them up off the ground, though.

6 Q. Was your father very instrumental or
7 very helpful in raising Haley?

8 A. Yes.

9 Q. How about your mother?

10 A. Yes, both of them.

11 Q. Was this a happy time in your
12 parents' life?

13 A. Extremely happy time.

14 Q. What did the relationship -- based on
15 your observations, how would you describe the
16 relationship between your mother and Haley?

17 A. My mother and Haley have this
18 incredibly close relationship. Haley, from the day
19 she was born until the day that my mother died, she
20 lived in the house. They were very bonded. They
21 loved each other.

22 Q. And did you and your mother and Haley
23 ever travel together?

24 A. Yes, we did travel together.

25 MR. MIGLIORI: May I see P-56,
Mehlman-Direct/Migliori 2614
1 please.

2 Q. Can you describe this picture for us?

3 A. Yes, this was in January of 1995, and
4 that's my mother with Haley on her lap and we had
5 taken -- the three girls, the three Mehlman girls,
6 actually Horowitz, went to Bermuda. We had a great
7 time.

8 Q. Was that a special time in your
9 relationship with your mother?

10 A. Yes.

11 Q. How did the relationship between your
12 mother and Haley make you feel?

13 A. I was so happy about this
14 relationship, because it had always been emphasized
15 in my family about how important it was. As you saw
16 in the earlier picture, it was important to my
17 mother that we had a close relationship with her
18 mother, and I could see this beautiful relationship
19 developing between my mother and my daughter.

20 THE COURT: Do you need water up
21 there? You got your own bottle. That's good.

22 Q. That is your bottle, by the way?

23 A. It is?

24 Q. It is.

25 A. I didn't just want to spill it. It
Mehlman-Direct/Migliori 2615
1 would feel nice probably right now.

2 MR. MIGLIORI: May I have P-57,
3 please.

4 Q. Who's in this picture?

5 A. That's my daughter Haley and she's
6 holding my son Jonathan shortly after he was born.

7 Q. Did your mother ever know Jonathan?

8 A. No, my -- I was eight months pregnant
9 when my mother died, but she knew I was having
10 Jonathan. She knew he was a boy, and she named him.
11 She always loved the name Jonathan. His name is
12 Jonathan Lloyd. Lloyd is her maiden name. And so
13 she was able to give him the name that she loved so
14 much.

15 THE COURT: Do you want a tissue?

16 THE WITNESS: I didn't mean to cry.

17 THE COURT: That's all right. That's
18 why I keep the auxiliary tissues here.

19 THE WITNESS: Thank you.

20 Q. Now, you said that you were eight
21 months pregnant when your mother passed away; is
22 that correct?

23 A. Yes.

24 Q. How old was Haley at that point in
25 time?
Mehlman-Direct/Migliori 2616

1 A. Two and a half.

2 Q. Now, was Haley, based on your
3 observation, was Haley able to appreciate what was
4 happening with her grandmother?

5 A. Yes, she was able to appreciate. In
6 fact, that was obvious to me because my mother,
7 among many of the things that she had given her, was
8 this little pink lamb, soft lamb, and Haley took it
9 everywhere. She didn't have a blanket, she had this
10 lamb. And when my mother went to the hospital the
11 first time in Presbyterian and Haley came to go
12 visit her, she gave her the lamb and she said, you
13 stay with this lamb until you get better, and my

14 mother kept that lamb until the day that she died,
15 and in the hospital. We buried her with that lamb.
16 I'm not going to cry. I'm not going
17 to cry.
18 THE COURT: That's all right. We'll
19 take a minute.
20 A. Afterwards my dad went to Nordstroms
21 in Menlo Park after my mom died, one of the first
22 things he did was go there and get another lamb, and
23 she keeps it with her.
24 THE COURT: Hope, let's take a
25 minute. Okay. Take some water.
Mehlman-Direct/Migliori 2617
1 Folks, get up and stretch.
2 You tell me when you're ready.
3 THE WITNESS: I'm sorry.
4 THE COURT: You tell me when you're
5 ready.
6 All right. Let's continue.
7 MR. MIGLIORI: Thank you, Your Honor.
8 BY MR. MIGLIORI:
9 Q. Let's change gears just a little bit.
10 There's been a lot of discussion
11 about the nature -- about the nature of your
12 relationship between your mother and your father.
13 In your own words, based on your own observations,
14 how would you describe their relationship?
15 A. My parents had a wonderful
16 relationship. They had a loving relationship, and
17 as every relationship, there are always
18 disagreements, but it was a wonderful, loving
19 relationship.
20 Q. Has your -- have your parents or has
21 their relationship served any import to your
22 relationship with your husband?
23 A. Yes.
24 THE COURT: Slow.
25 Q. Just slow down.
Mehlman-Direct/Migliori 2618
1 A. I'm sorry.
2 THE COURT: Because this woman's
3 typing here, and she's good, but she can't hear two
4 people at once. Okay?
5 THE WITNESS: Sure.
6 THE COURT: All right.
7 You want to reask the question?
8 MR. MIGLIORI: Sure.
9 THE COURT: Go ahead.
10 Q. Has your parents' relationship had
11 any import on your relationship with your husband,
12 Eli?
13 A. Yes. It's been a model relationship
14 for my relationship with Eli.
15 Q. Did your mother have a sense of
16 humor?
17 A. My mother was very funny. She was
18 very funny.
19 Q. How about your father?
20 A. My dad is funny, too.
21 Q. And you lived in their home from 1988
22 until 1997?
23 A. Correct.
24 Q. And you observed their relationship

25 on a daily basis during that period of time?
Mehlman-Direct/Migliori 2619

1 A. Yes.

2 Q. And did you ever consider their
3 relationship to be abusive?

4 A. Absolutely not. And if -- I loved my
5 mother too much. If that's how it would have been,
6 it never would have happened.

7 Q. Did you ever view your parents'
8 relationship to be unhappy?

9 A. No. But there were occasions where
10 people would have disagreements, but no, it was not
11 an unhappy relationship. It was a very happy
12 relationship. It was a strong relationship.

13 Q. Did you ever view the relationship
14 between your parents to be violent?

15 A. No.

16 Q. Now, there's some discussion about
17 when and how long your mother smoked. How old were
18 you in 1975?

19 A. I was ten.

20 Q. Do you yourself have any direct or
21 personal knowledge of the brands of cigarettes your
22 mom smoked?

23 A. No, I don't.

24 Q. Do you have any direct or personal
25 knowledge of the different attempts that your mom
Mehlman-Direct/Migliori 2620
1 made to quit smoking?

2 A. No, I don't.

3 Q. Do you have any direct or personal
4 knowledge of what year it was that your mother
5 finally quit?

6 A. No. I was very young. I don't know.

7 Q. Who in your family has the most
8 direct and personal knowledge of your mother's
9 smoking history?

10 A. My father.

11 Q. Now, when did you first learn of your
12 mother's diagnosis?

13 A. On March 13th, 1997.

14 Q. And where were you at that time?

15 A. I was over here at the hospital. I
16 hadn't been feeling well and I had my regular
17 appointment and, as I told you, I had a lot of
18 morning sickness, and when I got here I was
19 dehydrated. So I was in the hospital and they
20 hooked me up to -- gave me saline fluids.

21 Q. And you learned while you were in the
22 hospital --

23 A. Yes, I --

24 THE COURT: Wait, wait, wait, wait.

25 Q. Slow down.

Mehlman-Direct/Migliori 2621

1 MR. MIGLIORI: Thank you, Your Honor.

2 THE COURT: Let him finish.

3 MR. MIGLIORI: I'll ask the question
4 again.

5 THE COURT: Okay.

6 Q. You learned while you were still in
7 the hospital, correct?

8 A. Yes.

9 Q. And when did you see your mother

10 next?
11 A. That evening.
12 Q. Could you describe the nature --
13 strike that. Based on your observations, could you
14 describe the change in your mother's physical
15 condition over the next couple of months?
16 A. My mother went from being a very
17 strong person who prepared all of us, to quickly
18 deteriorating. She became incontinent and had to
19 wear Depends. Then it came to the point where she
20 couldn't even change them herself. She couldn't
21 walk, she couldn't breath, and it was humiliating to
22 her that her eight-month-pregnant daughter had to
23 help her change her diapers.
24 Q. Was your family by her side during
25 these months?
Mehlman-Direct/Migliori 2622
1 A. Yes.
2 Q. Can you describe your father's
3 relationship with your mother during these months?
4 A. It was incredible. My dad never left
5 her. We were all there. I don't know how my dad
6 had the strength to do that day in and day out. My
7 sister came home from school, walked out on her
8 graduate program. My other sister was there. My
9 sister's in-laws were on the phone, Mara's in-laws
10 every day. My other sister's in-laws were on the
11 phone every day. My sister's in-laws from
12 Washington came up to see my mother in the hospital,
13 make sure everything was going okay. My
14 father-in-law came from Florida.
15 We all rallied around her. We didn't
16 leave her. And when we were in the hospital we
17 would take turns. My dad was always there sleeping,
18 but we would take turns. My husband slept there, I
19 slept there, my brother-in-law slept there, my
20 sister slept there, my other sister slept there, my
21 other brother-in-law slept there. My sister and my
22 brother donated blood for a transfusion because they
23 were the correct type.
24 And the feeling around the ICU was
25 that this was some kind of incredible family that
Mehlman-Direct/Migliori 2623
1 they had never seen day in and day out rally by her.
2 Q. Your mother passed away in June of
3 1997?
4 A. Yes.
5 Q. Can you describe what was missing
6 after your mother died in terms of your family?
7 A. We're still very close. My dad calls
8 me every day and I speak to my sister. We E-mail
9 now. That's the new thing. But I've lost my best
10 friend, my adviser, my confidant, and my children --
11 my Jonathan will never know my mother. My mother
12 will never have the joy of having this other child,
13 my sister's own, and Haley -- I promised my mother
14 two things when she became ill, and one was that I
15 would take care of my father and that Haley would
16 never forget her. Those were the two things I
17 promised, and I'm trying to fulfill both of those.
18 THE COURT: Hope, take a minute.
19 Take a minute.
20 THE WITNESS: I'm trying not to cry.

21 THE COURT: That's all right. Take a
22 minute. It's not a problem.

23 Q. I only have two more questions. How
24 do you want to remember your mother?

25 A. I want to remember my mother as a
Mehlman-Direct/Migliori 2624
1 strong women who loved her children, loved all
2 children, loved her family. She was smart,
3 beautiful. She did her job well, she made us strong
4 and self-reliant, educated and a good person like
5 she was.

6 Q. What, if anything, have you done to
7 help you remember your mother and to help others
8 remember your mother the way you want her to be
9 remembered?

10 A. My mother, when we were living in
11 Princeton and Haley was at Princeton Montessori,
12 that school was wonderful, the children were
13 wonderful, the teachers were wonderful, and my mom
14 always said she wanted to do something in that
15 school to bring joy to the children, and after she
16 died we had a -- donated money to have a
17 custom-built aquarium. It's beautiful.

18 When you walk in you see this
19 beautiful aquarium and the children sit there and
20 they have joy, and they put a plaque up there with
21 my mother's favorite quote, which was, With each
22 child the world is born anew, and it says in memory
23 of Constance Mehlman, grandmother of Haley and
24 Jonathan Horowitz.

25 Q. Did you do anything at your own alma
Mehlman-Direct/Migliori 2625
1 mater, Seton Hall, to help remember your mother?

2 A. Yes.

3 MR. MIGLIORI: May I have P-68.

4 MS. ROOSEVELT: Your Honor.

5 THE COURT: Sustained.

6 Do you want a side bar, or is that
7 sufficient?

8 MS. ROOSEVELT: I'm sorry?

9 THE COURT: Did you want a side bar
10 or is that sufficient?

11 MS. ROOSEVELT: That's sufficient.

12 Q. Do you smoke?

13 A. No.

14 Q. Have you ever smoked?

15 A. No.

16 Q. Why don't you?

17 A. I won't smoke because I know that my
18 mother wouldn't want me to smoke, that it's
19 dangerous to your health, and that's why.

20 Q. Thank you, Hope.

21 MR. MIGLIORI: That's all I have.

22 THE COURT: Take some water.

23 Cross-examination?

24 MS. ROOSEVELT: Thank you, Your
25 Honor.
Mehlman-Cross/Roosevelt 2626

1
2 CROSS-EXAMINATION BY MS. ROOSEVELT:

3 Q. Good afternoon --

4 THE COURT: Wait. This definitely is
5 not on. Is it on now? Try it again.

6 Q. Good afternoon, ladies and gentlemen.
7 Good afternoon, Ms. Mehlman.
8 A. Good afternoon.
9 Q. You go by Ms. Mehlman; is that
10 correct?
11 A. That is correct.
12 Q. I'm very sorry about your loss, and I
13 appreciate you being here, and I have a few
14 questions for you, and I'll try to make it as quick
15 as I can.
16 The jury has heard a lot about your
17 mother's reading, the fact that she enjoyed reading,
18 but I want to ask you a few questions about her
19 television habits.
20 Your mother watched the evening news
21 programs regularly; is that correct?
22 A. That's correct.
23 Q. I think the word you used was
24 religiously?
25 A. Correct.
Mehlman-Cross/Roosevelt 2627
1 Q. And she also enjoyed watching the
2 early morning news programs?
3 A. That's correct.
4 Q. And she also enjoyed watching news
5 programs such as 60 Minutes?
6 A. That's correct.
7 THE COURT: Wait, wait. Can you
8 lower Hope's microphone, please?
9 A. Is it mine? I don't think mine's
10 working.
11 THE COURT: We can hear you.
12 Go ahead.
13 Q. You were born on November 30th, 1964?
14 A. Correct.
15 Q. So in 1974 you were ten years old?
16 A. Correct, at the end of 1974.
17 Q. In November of 1974?
18 A. Yes.
19 Q. As I understand it, you recall only
20 one time where you actually saw your mother smoke a
21 cigarette?
22 A. That's -- that is correct, because my
23 mother was careful not to smoke in front of us.
24 Q. So you only saw her smoke a cigarette
25 one time?
Mehlman-Cross/Roosevelt 2628
1 A. That I recall. I was very young, and
2 I knew that she smoked, but I do recall the one
3 incident at the party, correct.
4 Q. And you saw her smoke once at a
5 party?
6 A. Correct.
7 Q. And you don't know what brand of
8 cigarettes your mother smoked, do you?
9 A. No, I don't. I was very young.
10 Q. When you were younger you always
11 understood from your parents that you should not
12 smoke?
13 A. There was a point, yes. I'm not sure
14 at what period.
15 Q. And you understood that smoking was
16 bad for you?

17 A. I did understand that.
18 Q. And as a result you never smoked
19 cigarettes?
20 A. Correct, and I also have asthma, so
21 that was another reason why I wouldn't have smoked.
22 Q. And your mother also had asthma?
23 A. Correct.
24 Q. And carried an inhaler with her
25 throughout her life?
Mehlman-Cross/Roosevelt 2629
1 A. As far as I can remember, yes, that's
2 correct.
3 Q. And, in fact, on occasion you recall
4 seeing your mother have asthma attacks?
5 A. Correct.
6 Q. And being rushed to the hospital for
7 her asthma?
8 A. Correct.
9 Q. Now, your father was always adamant
10 about your mother not smoking?
11 A. As far as I could recall, yes.
12 Q. And your mother understood that he
13 was adamant against her smoking?
14 A. Yes.
15 Q. And, in fact, your father disapproved
16 of her smoking?
17 A. That's correct.
18 Q. And it's also your understanding that
19 your mother was warned not to smoke by a doctor?
20 A. At some point that was the story that
21 I was told by her.
22 Q. That she had been warned by a doctor
23 not to smoke cigarettes?
24 A. I believe so, yes. But very late at
25 some point.
Mehlman-Cross/Roosevelt 2630
1 Q. And that was in relationship to her
2 possibly having emphysema?
3 A. Correct.
4 Q. So your mother was told -- was
5 concerned about smoking and the relationship between
6 smoking and emphysema?
7 THE COURT: Sustained, rephrase
8 please.
9 Q. Ms. Mehlman, are you aware that the
10 Surgeon General in 1964 stated that smoking causes
11 emphysema in men and women?
12 MR. MIGLIORI: Objection.
13 THE COURT: What's the basis?
14 MR. MIGLIORI: Relevancy. She was
15 born that year.
16 THE COURT: I'll allow that question.
17 Go ahead.
18 A. Am I aware today?
19 Q. That the Surgeon General in 1964
20 reported that smoking caused emphysema in men and
21 women?
22 THE COURT: The question is, is she
23 aware today? That's her question.
24 Q. Yes.
25 A. Sitting in this courtroom, that's
Mehlman-Cross/Roosevelt 2631
1 what I heard, yes. I did not know what the Surgeon

2 General's warning was, when it came out, what it
3 said.

4 Q. Now, there did come a time when your
5 mother quit smoking, right?

6 A. I -- yes.

7 Q. And I believe you testified that she
8 quit smoking in the '60s and then started smoking in
9 the '70s before quitting for good?

10 MR. MIGLIORI: Objection.

11 THE COURT: Is this in the
12 deposition?

13 MR. MIGLIORI: I don't believe that
14 is the testimony.

15 THE COURT: Is that your proffer, it
16 is in the deposition?

17 MS. ROOSEVELT: It is in the
18 deposition, Your Honor.

19 THE COURT: Okay.

20 A. I think you're taking it out of
21 context.

22 Q. Would you like to take a look at it?
23 If we could, why don't we look at HM-44.

24 (A videotape is played for the jury.)

25 Q. And, Ms. Mehlman, is that your
Mehlman-Cross/Roosevelt 2632
1 testimony from your deposition?

2 MR. MIGLIORI: Your Honor, I only ask
3 for a citation to page number of the transcript.

4 THE COURT: I apologize, I should
5 have asked for it.

6 Could you give us the citation,
7 please?

8 MS. ROOSEVELT: Deposition Page 65,
9 lines 22 through 66, line 5.

10 THE COURT: I'm sorry, that's my
11 fault. I should have reminded you.

12 MS. ROOSEVELT: Okay.

13 A. And if you go on I say that I don't
14 know.

15 Q. But that was the testimony that you
16 gave at your deposition?

17 A. Yes, and I was very unspecific. Yes,
18 that's correct.

19 Q. You also stated that when she quit
20 the first time, that lasted for several years; is
21 that correct?

22 A. I don't recall that, but maybe I said
23 that. I don't know.

24 Q. So she may have -- you may have in
25 fact said that the first time she quit smoking she
Mehlman-Cross/Roosevelt 2633
1 quit for several years?

2 A. I don't recall saying that.

3 THE COURT: Wait. Let's not talk
4 over each other. I have to hear her question fully
5 before you can answer it. Okay?

6 THE WITNESS: Sorry.

7 THE COURT: Do you want to reask the
8 question, please.

9 Q. Ms. Mehlman, do you dispute that at
10 your deposition you said the first time your mother
11 quit smoking that lasted for several years?

12 A. I'm not disputing it, but I was very

13 young and didn't have the knowledge.
14 Q. Why don't we take a look at what you
15 said.
16 MS. ROOSEVELT: HM-45, please.
17 THE COURT: I'm sorry. Stop. Stop.
18 You have to give the cite before you
19 have him pull it up so counsel can reference it.
20 Okay?
21 MS. ROOSEVELT: If we could look at
22 Page 92 starting with line 19 to Page 93 starting
23 with line 1. Actually it's 92, 19 to 92, 22, I
24 think.
25 THE COURT: Do you have the
Mehlman-Redirect/Migliori 2634
1 deposition, Mr. Migliori?
2 MR. MIGLIORI: I do, Your Honor.
3 Thank you.
4 (A videotape is played for the jury.)
5 Q. Do you recall giving that testimony,
6 Ms. Mehlman?
7 A. If it's there, I gave it. Whether I
8 recall it or not is another thing.
9 Q. Ms. Mehlman, thank you very much. I
10 appreciate it.
11 A. Thank you.
12 THE COURT: Redirect.
13
14 REDIRECT EXAMINATION BY MR. MIGLIORI:
15 Q. Hope, I just have two questions.
16 Were you personally making any decisions about
17 whether or not to smoke before the age of ten?
18 A. No, I was not.
19 Q. And Hope, who in your family had the
20 most personal knowledge about your mother's smoking
21 habits?
22 A. My father had most of that knowledge.
23 Q. That's all I have, Hope. Thank you.
24 THE COURT: Ms. Roosevelt, anything?
25 MS. ROOSEVELT: No. Thank you, Your
Mehlman-Redirect/Migliori 2635
1 Honor.
2 THE COURT: Thank you very much. You
3 may de-mic and then step down. Thank you.
4 THE COURT: Mr. Patrick.
5 MR. PATRICK: Your Honor, subject to
6 additions on the exhibit list of those exhibits we
7 entered into evidence today, the plaintiff would
8 rest.
9 THE COURT: And the stipulations that
10 have been added, correct?
11 MR. PATRICK: That's correct.
12 MR. ROSENBERG: That's correct, Your
13 Honor.
14 MR. BIERSTEKER: Yes, Your Honor.
15 THE COURT: Ladies and gentlemen,
16 that concludes the testimony of the plaintiff's
17 case. Tomorrow we will begin the testimony from the
18 defendants' case. And I will need to speak to the
19 lawyers for a few minutes tonight, maybe about 15
20 minutes tomorrow, so the witness is ready for 9:30
21 tomorrow?
22 MR. BIERSTEKER: Yes, Your Honor.
23 THE COURT: If we can get you in the

24 box earlier, we'll try. But I promise you, I'll
25 try, no later than 9:30. So if you could be here at
Mehlman-Redirect/Migliori 2636
1 9:15 ready to go, I'd appreciate that very much.
2 All right. Thank you again for your
3 patience with this. Get some fresh air. Please,
4 again, do not discuss this case.
5 Sit down. Sit down. I didn't tell
6 you to go. See everyone. When I say you can go,
7 you can go.
8 Remember, when I first had you on
9 side bar I said to you, if you keep an open mind,
10 listen to all the evidence. You only heard a
11 partial amount of the evidence. It is as important
12 today as it was the first day, as it will be the
13 last day of trial. Keep an open mind, listen to all
14 the evidence. Do not discuss this case today
15 because we concluded the plaintiff's case, either
16 amongst yourselves or with anyone else. The same
17 instructions regarding the newspapers and/or the
18 television. Okay. Do we understand each other?
19 Okay. Now, Ms. Manning, if you would
20 lead your group, I'd appreciate it.
21 (The jury leaves the courtroom.)
22 THE COURT: Thank you very much. Be
23 seated.
24 All right. It's important at the end
25 of the case to remind the jury.
Mehlman-Redirect/Migliori 2637
1 Tomorrow I'm going to meet counsel,
2 lead counsels in chambers regarding your motion,
3 from your brief outline. We already put the time on
4 the record. I would like to see the stipulation
5 list tomorrow with the addition and I already told
6 you about the additional suggested jury charge on
7 that issue. All right.
8 Is there anything else before we
9 begin defendants' case tomorrow?
10 MR. BIERSTEKER: I don't believe so,
11 Your Honor.
12 THE COURT: Okay. Are the issues
13 worked out for the witness tomorrow?
14 MR. BIERSTEKER: There's one issue,
15 but I think we can avoid it, and if it's necessary
16 we'll bring it to Your Honor's attention tomorrow
17 morning.
18 THE COURT: At least five minutes
19 before I get on the bench to tell me about it.
20 MR. BIERSTEKER: Maybe ten, Your
21 Honor.
22 THE COURT: Always fair. With that
23 again, I want to thank everyone for your patience.
24 I apologize once again, but as you can see, despite
25 my best effort, I have no control over what is the
Mehlman-Redirect/Migliori 2638
1 nonexistent air conditioning system.
2 So thank you very much, have a good
3 night, and I'll see you all tomorrow.
4 (The trial is adjourned at 4:06 p.m.)
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